TRANSCRI[illegible] ECORD.

SUPREME COURT OF THE UNITED STATES.

No. 241.

THE CECIL NATIONAL BANK OF PORT DEPOSIT, MARYLAND, AND JACOB TOME, APPELLANTS,

vs.

THE WATSONTOWN BANK.

[illegible]PEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 11, 1879.

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1 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

[SEAL.] In the circuit court of the United States for the western district of Pennsylvania, at Williamsport, it is thus contained at No. 2, June term, A. D. 1877.

Appearance-docket entry.

Armstrong & Linn.

THE CECIL NATIONAL BANK OF PORT DEposit, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland,
vs.
THE WATSONTOWN BANK, A CITIZEN OF THE State of Pennsylvania.

H. H. Cummin.
Att'ys pd. $5.00.

Bill in equity filed September 22, 1876; subpœna in equity issued September 22, 1876. Returnable first Monday of October, 1876.

September 29, 1876, served the within writ on R. W. Claxton, cashier of the Watsontown Bank, and Septem' 30, 1876, upon Ario
2 Pardee, president of the said bank, by informing them of the contents, and leaving a true and attested copy of the same with each of them. So ans. John Hall, U. S. M., per L. H. Martin, deputy. Marshal's costs, $19.20; paid by pl'ff's att'ys.

And now, Oct. 2, 1876, H. H. Cummin, esq., appears for the defendant reserving all exceptions, as per appearance filed.

November 4, 1876. Answer of defendant filed. Replication filed November 4, 1876.

April 27, 1877, filed agreement of counsel for plaintiff and defendant that Addison Candor, esq., be appointed, by mutual consent of the parties, as examiner to take the testimony of both plaintiff and defendant, with like effect as if he were duly appointed by the court.

May 27, 1878. Report of examiner filed. Fee, $75.00.

June 24, 1878. Argument of above cause continued; to be heard at Pittsburgh, at next November term. Per cur.

March 26, 1879. Opinion of W. McKennan, C. J., filed, and the following decree ordered to be entered:

3 "It is therefore ordered, adjudged, and decreed that, upon the payment to the Watsontown Bank by the complainant of the sum of $5,215.67, with interest from Feb'y 1, 1876, the said Watsontown Bank, its officers, and directors permit the attorney in fact of Powell & Co., so constituted by their letter of attorney, dated Feb'y 16, 1874, to transfer to the person named therein, on the proper books of said bank, one hundred and eighty shares of its capital stock, embraced in certificate No. 63, issued to said Powell & Co., in such manner as by its charter and by-laws is ordained; that it cause to be made and delivered to the transferee of said stock a certificate therefor in due form; that all dividends which have accrued upon said stock since the first day of Feb'y, 1876, be deducted from the sum ordered to be paid as aforesaid, and that the said net sum be paid within ninety days

from the date of the entry of this decree; in default of which payment this bill shall be dismissed. And it is further decreed that this
4 decree be entered without costs."

April 29, 1879. Filed bail for appeal. Approved by W. McKennan, circuit judge. Same day filed allowance of appeal to the Supreme Court of the United States.

June 10, 1879. Specification of errors filed.

5 *Bill in equity.*

In the circuit court of the United States for the western district of Pennsylvania.

THE CECIL NATIONAL BANK OF PORT DEposit, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland,
vs.
THE WATSONTOWN BANK, A CITIZEN OF THE State of Pennsylvania.
} No. 2. June term, 1877.

To the honorable the judges of the circuit court of the United States for the western district of Pennsylvania, sitting in equity:

The Cecil National Bank, of Port Deposit, a corporation created and organized by and under the laws of the United States, and a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of
6 Maryland, bring this their bill against the Watsontown Bank, a corporation created and organized by and under the laws of Pennsylvania, and a citizen of the State of Pennsylvania, and having its banking-house and place of business at Watsontown, in the county of Northumberland, and State of Pennsylvania.

And thereupon your orators complain and say:

1. That heretofore, to wit, on the 4th day of December, 1875, a certain promissory note was made by Powell & Co., a firm then carrying on and conducting business in the city of Williamsport, in the State of Pennsylvania, in and by which the said Powell & Co. promised to pay to the order of themselves, the sum of five thousand dollars, thirty days after the date thereof; which said promissory note is in the words and figures following, viz.:

"$5,000. | WILLIAMSPORT, PA., *Dec.* 4, 1875.

"Thirty days after date, we promise to pay to the order of ourselves, five thousand dollars, without defalcation, for value received,
7 having deposited herewith certificate of two hundred shares of Watsontown Bank stock, which we authorize the holder of this note, upon the non-performance of this promise at maturity, to sell, either at the brokers' board, or at public or private sale, without demanding payment of this note or the debt due thereon and without further notice, and apply the proceeds, or as much thereof as may be necessary, to the payment of this note and all necessary expenses and charges, holding ourselves responsible for any deficiency.

"POWELL AND CO.

"Payable at .
"Due ."

[Revenue stamp.]

Which said promissory note having been duly endorsed by the said Powell & Co., the payees thereof, was, on or about the day of date thereof,

discounted by the said The Cecil National Bank, and to her de-
8 livered; and simultaneously therewith there was deposited there-
with and delivered to Jacob Tome, then president of the said bank, certificate of two hundred shares of the capital stock of the Watsontown Bank, mentioned in the said note, to hold in trust for the holder of said note, and for the purpose in the body of said note mentioned and set forth, which said two hundred shares of stock at the time the certificate thereof was delivered to said Jacob Tome belonged to and stood on the books of the Watsontown Bank in the name of the said Powell & Co.

2. That on the 20th day of December, 1875, a certain other promissory note was made by the said Powell & Co., in and by which they promised to pay to the order of P. Herdic the sum of five thousand dollars, forty days from the date thereof, without defalcation, for value received, payable at Cecil National Bank of Port Deposit; which said last mentioned note is in the words and figures following, viz:

9 $5,000.] WILLIAMSPORT, PA., *Dec. 20th*, 1875.

Forty days after date we promise to pay to the order of P. Herdic five thousand dollars, without defalcation, for value received, having deposited herewith two hundred shares of the capital stock of the Watsontown Bank, now held by J. Tome, which we authorize the holder of this note, upon the non-performance of this promise at maturity, to sell, either at the brokers' board or at public or private sale, without demanding payment of this note or the debt due thereon and without further notice, and apply the proceeds, or as much thereof as may be necessary, to the payment of this note and all necessary expenses and charges, holding ourselves responsible for any deficiency.

POWELL & CO.

Payable at the Cecil National Bank of Port Deposit.

Which said promissory note having been duly endorsed by the
10 said P. Herdic, the payee thereof, was, on or about the day of the
date thereof, discounted by the Cecil National Bank, and to her delivered; and simultaneously there was deposited therewith and delivered to the said Jacob Tome, then president of said bank, certificate of two hundred shares of the capital stock of the Watsontown Bank mention' in said note, and to hold in trust for the holder of said note and for the purpose in the body of the note mentioned and set forth, it being the same certificate of capital stock hereinbefore mentioned as having been deposited and delivered to said Tome when the previous note of the 4th of Dec., 1875, was discounted by the Cecil National Bank as aforesaid.

That the said promissory note for $5,000, dated Dec. 4, 1875, was discounted for and at the request of the said Powell & Co., by whom the said certificate of the two hundred shares of the capital stock of the
Watsontown Bank was deposited as stated in said note and deliv-
11 ered to the said J. Tome for the purposes therein stated, and the
other of said promissory notes was discounted at the instance and request of the said P. Herdic the payee and endorser thereof.

3. That the said Powell & Co. failed to pay the said promissory notes or either of them, and the same still remain due and unpaid to the said Cecil National Bank, the holder and owner thereof, and by whom they were discounted as aforesaid, and that on or about the 31st day of January, 1876, the said J. Tome, president as aforesaid, being

the holder of certificate of two hundred shares of the stock of the Watsontown Bank, to whom the same was delivered for the purposes specified in and by said promissory notes, transmitted the same to the Watsontown Bank along with a letter to R. B. Claxton, the cashier thereof, requesting that a new certificate thereof, in the name
12 of the said J. Tome, should be sent to him.

4. That by letter under date of Feb'y 1st, 1876, to R. C. Hopkins, cashier of the Cecil National Bank, R. B. Claxton, jr., cashier of the Watsontown Bank, acknowledged the receipt of the said certificate of stock and informed him that, owing to the absence of the president of the bank his signature could not then be procured, but that he would forward to him a certificate *to him* in a short time.

That in and by the same letter the said cashier suggested that he thought he could find a purchaser or purchasers for said stock, naming the price at which he thought it could be sold, and offering to dispose of the same if the said J. Tome so desired.

That in pursuance of said suggestion and offer, he, the said R. B. Claxton, jr., cashier as aforesaid, was authorized by said J. Tome,
13 president as aforesaid, to make sale of said stock, if purchasers could be found; and afterwards, to wit, on or about the 21st day of Feb'y, 1876, the said R. B. Claxton did make sale of a portion of said stock, to wit, twenty shares thereof, for the sum of $1,050, which sum, less $1.25, exchange, was placed to the credit of the said J. Tome on the books of the said Watsontown Bank, and the proceeds remitted to the said J. Tome by the said R. B. Claxton, cashier, by letter, in and by which said letter, containing statement of account of sale of said stock, the said cashier informed the said J. Tome that he had prospects of selling more of said stock shortly.

5. That after transmitting to said bank the said certificate of stock aforesaid, several letters were written by the said R. B. Claxton on the subject, some of which were directed to the said J. Tome and oth-
14 ers to R. C. Hopkins, cashier of the Cecil National Bank, which were duly and promptly answered, and in all of which letters written by the said R. B. Claxton, cashier, the said J. Tome received the assurance, directly or indirectly that his right to the said stock and proceeds thereof was recognized by the Watsontown Bank, and that a new certificate therefor would be issued to him, and such assurances were continued from time to time until the 14th day of April, 1876, at which time a letter was written to said J. Tome by a certain Oscar Foust, professing to act as attorney for the Watsontown Bank, admitting the receipt by said bank of said certificate of stock, and informing the said Tome that the board of directors would not permit the transfer of said stock until an alleged indebtedness of said Powell & Co. to the Watsontown Bank was secured to the satisfaction of the board of directors.

6. That after the transmission of the said certificate of stock
15 on the 31st of January, 1876, as aforesaid, and until the receipt of the letter of Oscar Foust, esq., of the 14th of April, 1876, the said Cecil National Bank and the said J. Tome, relying upon the assurance contained in the letters of R. B. Claxton, cashier, and reposing faith in the statements and promises therein contained, authorized and permitted the said Watsontown Bank and the said R. B. Claxton, jr., its cashier, to retain the said certificate of stock, and to sell and offer for sale on account of the said The Cecil National Bank, the shares of stock therein represented, and until the letter of the said Oscar Fonst it was never intimated by the said Watsontown Bank, or its officers, that the

said Powell & Co. were indebted to them, or that any objection would be made to the transfer thereof, or to the granting of a new certificate therefor to the said J. Tome, but, on the contrary, the said The Cecil National Bank and the said J. Tome were encouraged by the said
16 correspondence with R. B. Claxton, jr., cashier, to believe and did believe that the said stock was a valid and available security to them for the payment of the said notes.

7. That the said Powell & Co. failed, on or about the thirteenth day of April, 1876, and made a voluntary assignment for the benefit of all their creditors, and plaintiffs are informed and believe that their assets will be sufficient to pay but a very small portion of their indebtedness, if any.

8th. That the said defendant, being then and there in possession of the said certificate of stock, together with the power of attorney of the said Powell & Co. to transfer the same, she the said The Cecil National Bank, being the owner of said shares of stock, did, through and by Jacob Tome, the president thereof, immediately after the receipt
17 of the letter from the said Oscar Foust, to wit, on or about the 16th day of April, A. D. 1876, and on divers other days and times thereafter and before the filing of this bill, demand, as she had before done, that she the said The Watsontown Bank should transfer the said shares of stock on the books of the said bank to the said The Cecil National Bank, and that a certificate therefor should be issued and delivered to her for the same. But the said The Watsontown Bank, although of' requested so to do, hath refused and still doth refuse to transfer the same, or any part thereof, on the books of said bank to the said The Cecil National Bank, or to deliver certificates therefor.

By reason whereof the said The Cecil National Bank has been wholly unable to make sale of the same or to make the same available for the payment of the said notes; which notes by reason thereof remain in the hands of the said bank, due and payable and unpaid.

18 9. That the capital stock of the Watsontown Bank is fluctuating in value and liable to great depreciation, and your orators apprehend and believe great and irreparable injury will be done to and suffered by your orators, unless the said The Watsontown Bank and its board of directors and officers are compelled by the order and injunction of this honorable court to permit the transfer of the said two hundred shares of stock, or as much thereof as remains unsold, to the said J. Tome, or the Cecil National Bank, so that the same may be disposed of for the purposes designated in the aforesaid promissory notes.

10. To the end, therefore, that the defendant may be compelled to permit transfers to be made upon the books of the said The Watsontown Bank to the said The Cecil National Bank, or to such other person or persons to whom the complainants may desire to transfer
19 such stock, to wit, the said two hundred shares of the capital stock of the said The Watsontown Bank mentioned in the said promissory notes respectively; and that the defendant may be compelled by the order and decree of your honorable court to pay to the said The Cecil National Bank, of Port Deposit, such damages as she the *The* Cecil National Bank, of Port Deposit, has sustained or may hereafter sustain by reason of the refusal of the said defendant to permit the transfer on the books of said bank of the said two hundred shares of the capital stock of the Watsontown Bank, and to issue certificates therefor; and that your orators may have such further relief in the premises as the nature of the case shall require and to your honors shall seem meet:

May it please your honors to grant unto your orators a writ of subpœna, to be directed to the said The Watsontown Bank, thereby
20 commanding him at a certain day and under a certain pain to be therein limited, personally to be and appear before your honorable court, and then and there full, true, direct and perfect answer to make to all and singular the premises, and further to stand, to perform, and abide such further order, direction, and decree therein as your honors shall seem meet.

And they will ever pray, &c.

J. TOME.

UNITED STATES,
District of Maryland, ss:

Jacob Tome, one of the plaintiffs named in the foregoing bill, being duly sworn according to law, doth depose and say, that the facts therein set forth, are true so far as the plaintiff speaks from his own knowledge, and so far as he speaks from the information of others he believes them to be true.

J. TOME.

Sworn and subscribed before me the 14th day of Sept., 1876.

[SEAL.] ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

(Endorsed:) Circuit ct. U. S. No. 2. June term, 1877. Cecil
21 Nat. Bank vs. Watsontown Bank. Bill in equity. Filed September 22, 1876. Armstrong & Linn.

22 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

[SEAL.] The President of the United States to the Watsontown Bank a citizen of the State of Pennsylvania:

For certain causes offered before the circuit court of the United States in and for the western district of Pennsylvania in the third circuit, in the bill of equity of The Cecil National Bank of Port Deposit, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland, we command and strictly enjoin you that, laying aside all other matters, and notwithstanding any excuse, you personally be and appear before the judge of the said court, at a session of the same court to be holden at Williamsport, Pa., on the second day of October, 1876, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And this you are in no wise to omit under the penalty of ten thousand dollars.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Williamsport, Pa., this twenty-second day of September, A. D. 1876, and of the Independence of the United States the one hundred and first.

B. S. BENTLEY, JR., *Clerk.*

The defendant is required to enter appearance in this suit on or before the return day of this writ, otherwise the bill may be taken pro confesso.

23 (Indorsed:) No. 2. June term, 1877. The Cecil National Bank of Port Deposit, a citizen of the State of Maryland, and

Jacob Tome, a citizen of the State of Maryland vs. The Watsontown Bank, a citizen of the State of Pennsylvania. Sub'a in equity.

Sept. 29, 1876, served the within writ on R. B. Claxton, cashier of the Watsontown Bank, and Sept. 30, 1876, upon Ario Pardee, president of the said bank, by informing them of the contents and leaving a true and attested copy of the same with each of them.

So ans:

JOHN HALL, *U. S. M.*
Per L. H. MARTIN, *Dep.*

Mar. costs, $19.20; 142 miles.
Armstrong & Linn.

24 *Appearance.*

Circuit court U. S., western dist. Penn'a.

THE CECIL NAT'L BANK
vs.
THE WATSONTOWN BANK, A CITIZEN of Pa., &c. } No. 2. June term, 1877.

And now Oct. 2, 1876, I hereby appear for the defendant in the above-stated case reserving all exceptions, &c.

H. H. CUMMIN,
Att'y for Def't.

(Endorsed:) No. 2. June term, 1877. The Cecil National Bank vs. The Watsontown Bank. Appearance. Filed Oct. 2, 1876.

25 *Answer.*

In the circuit court of the United States for the western district of Pennsylvania.

THE CECIL NATIONAL BANK OF PORT Deposit, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland,
vs.
THE WATSONTOWN BANK, A CITIZEN of the State of Pennsylvania. } No. 2. June term, 1877.

To the honorable the judges of said court:

The answer of the Watsontown Bank, defendant, to the bill of complaint of the above stated plaintiffs:

This defendant now and at all times hereafter saving and reserving unto himself all benefits and advantage of exception which can or may be
26 had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, says:

I. That by virtue of an act of general assembly of the State of Pennsylvania entitled "An act to incorporate the Watsontown Bank," approved on the 27th day of March, A. D. 1872, this defendant became

and is a body politic or corporate, with power to do banking business and with other powers in said act of assembly more particularly stated to which if material she prays leave to refer.

II. That this defendant was also subject, in her corporate capacity, inter alia, to the provisions of an act of assembly of the State of
27 Pennsylvania entitled "An act regulating banks," approved the 10th day of April, A. D. 1850, in which it is provided as follows:

SECTION 1st. That every banking corporation hereafter created by any special act of the general assembly, &c., shall be subject to the provisions of this act.

SECTION 10, ARTICLE 10. The stock of the bank shall be assignable and transferable on the books of the corporation only, and in the presence of the president or cashier in such manner as the by-laws shall ordain, but no stockholder indebted to the bank for a debt actually due and unpaid shall be authorized to make a transfer or receive a dividend until such debt is discharged or security to the satisfaction of the directors given for the same.

III. That this defendant has no knowledge or information of the matters alleged in the I and II paragraphs of the plaintiffs' bill,
28 save as therein stated, and therefore prays, if deemed material, that said plaintiff may be required to prove the same by competent and satisfactory evidence.

IV. That this defendant has no knowledge or information of the matters alleged in the III paragraph of the plaintiffs' bill, save as therein stated, except as hereinafter stated, and therefore prays, if deemed material, that said plaintiffs may be required to prove the same by competent and satisfactory evidence. Mr. R. B. Claxton, jr., then cashier of the corporation defendant, did receive, on or about the 1st day of February, A. D. 1876, from R. C. Hopkins, as cashier of the Cecil National Bank of Port Deposit, certificate No. 63, for two hundred shares of the capital stock of the corporation defendant, with a request that a new certificate in the name of J. Tome be sent therefor.

29 V. That this defendant has no knowledge or information of the matters alleged in the IV paragraph of the plaintiffs' bill, save as therein stated, except as hereinbefore and hereinafter stated, and therefore prays, if deemed material, that said plaintiffs may be required to prove the same by competent and satisfactory evidence. And this defendant avers that said R. B. Claxton, jr., cashier as aforesaid, had no authority whatever, either of law nor from the said corporation defendant, to say (if he did say so) that "owing to the absence of the president of the bank his signature could not then be procured, but that he would forward a certificate in a short time," nor had the said Claxton any authority whatever as an officer of said corporation defendant to undertake to sell or transfer said stock or any part thereof to the said Tome, nor to any other person or persons, nor was
30 any such sale or transfer made or information given with the knowledge or assent of the said corporation defendant; and the said defendant further avers that if the said Claxton did do as alleged in the 4th paragraph of the plaintiffs' bill, he did so entirely in his individual capacity, and not as an officer of the corporation defendant.

VI. That this defendant has no knowledge or information of the matters alleged in the V paragraph of the plaintiffs' bill save as therein stated, except as hereinafter stated, and therefore prays, if deemed material, that said plaintiffs may be required to prove the same by competent and satisfactory evidence. On the 14th day of April, A. D.

1876, Oscar Foust, esq., was authorized to write a letter to Mr. J. Tome, plaintiff, as stated in plaintiffs' bill, but this defendant denies
31 totally that any letters were written by the said Claxton or by any other person to the said Tome, or to any other person, in any way relating to said stock or giving any assurances or recognitions directly or indirectly in regard to the same or its transfer, with the knowledge, consent, or authority of this defendant.

VII. That this defendant has no knowledge or information of the matters alleged in the VI paragraph of the plaintiffs' bill save as therein stated, and therefore prays, if deemed material, that said plaintiff may be required to prove the same by competent and satisfactory evidence.

VIII. That under date of February 3d, A. D. 1876, the said R. B. Claxton, jr., as cashier of the said corporation defendant, was
32 notified by the Cecil Bank, plaintiff, to hold the said certificate of stock for further advice; that no request or demand was ever made by the said plaintiffs, or either of them, to the corporation defendant, or to any person authorized to act for them in that behalf, to transfer or permit to be transferred on their books the said two hundred shares of stock, or any part thereof, until about the 13th day of April, A. D. 1876, when the said J. Tome did request the transfer of said stock to himself, which was refused by the said corporation defendant, for the reason that the said Powell & Co., the former owners of said stock, were largely indebted to this defendant; and this defendant further avers, that on the said 13th day of April, A. D. 1876, the said Powell & Co. were indebted to them in the sum of eight thousand seven hundred and ninety-six $\frac{40}{100}$ dollars ($8,796.40), which sum of
33 money was then actually due and unpaid, and that a large portion of said indebtedness, to wit, the sum of five thousand two hundred and fifteen $\frac{67}{100}$ dollars ($5,215.67) was actually due and unpaid for some time before the said 13th day of April, A. D. 1876, to wit, on the 28th day of January, A. D. 1876; and this defendant further avers that no part of said indebtedness of Powell & Co. to this defendant has ever been paid, nor has any offer or tender to pay the same, or to give satisfactory security therefor, been made to this defendant by the said Powell & Co., or the said plaintiffs, or any other person.

IX. This defendant admits the allegation contained in the VII paragraph of the plaintiffs bill.

X. This defendant denies the allegations contained in the VIII paragraph of the plaintiffs' bill, and particularly denies that any
34 demand whatever was made by the said plaintiffs, or either of them, of this defendant in relation to said stock, except as stated in the VIII paragraph of this answer.

XI. This defendant denies the allegations contained in the IX paragraph of the plaintiffs' bill.

XII. This defendant further avers that the plaintiffs have sustained no injury which entitles them to relief in equity, and have full, adequate, and complete remedy at law for any injury alleged to be sustained by them in their said bill, and prays that she may have the same advantage of this allegation as if she had thus pleaded or demurred to the said bill.

XIII. This defendant further avers that she was and still is fully justified in law and equity in refusing to transfer the said two
35 hundred shares of her stock, and therefore prays that she may

be hence dismissed, with her reasonable costs and charges in this behalf most wrongfully sustained.

WATSONTOWN BANK,
SAMUEL CALDWELL,
Vice-President.

H. H. CUMMIN,
OSCAR FOUST,
Atty's for Def'ts.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Before me personally appeared Samuel Caldwell, who, being duly sworn according to law, deposes and says that he is the vice-president and acting president of the Watsontown Bank, and that the foregoing answer of the said bank is correct and true.

SAMUEL CALDWELL.

Sworn and subscribed before me this fourth day of November, A. D. 1876.

B. S. BENTLEY, JR., *Clerk.*

36 (Endorsed:) No. 2. June term, 1877. The Cecil National Bank and Jacob Tome vs. The Watsontown Bank. In equity. Answer of defendant. Filed Nov. 4, 1876.

37 *Replication.*

In the circuit court of the United States for the western district of Pennsylvania, of June term, 1877.

THE CECIL NATIONAL BANK OF PORT DEPOSIT, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland,
vs.
THE WATSONTOWN BANK, A CITIZEN OF THE State of Pennsylvania.
} No. 2.

The replication of the Cecil National Bank of Port Deposit, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland, complainants, to the answer of the Watsontown Bank, a citizen of the State of Pennsylvania.

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say, that they will aver and
38 prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; and all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

ARMSTRONG & LINN,
Att'ys for Pl'ffs.

39 (Endorsed:) No. 2. June term, 1877. Replication. The Cecil National Bank, of Port Deposit, Maryland, et al. vs. The Watsontown Bank. Filed Nov. 4, 1876.

40 *Agreement.*

In the circuit court of the United States for the western district of Pennsylvania.

THE CECIL NATIONAL BANK OF PORT DEPOSIT, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland,
vs.
THE WATSONTOWN BANK, A CITIZEN OF THE State of Pennsylvania.
} No. 2. June T., 1877. Equity.

And now, April, 27, 1877, it is agreed in the above stated case that Addison Candor, esq., be, and is hereby, appointed, by mutual consent of the parties, as examiner to take the testimony on behalf of both the plaintiffs and defendant, with like effect as if he were duly appointed by the court.

ARMSTRONG & LINN,
Counsel for Plaintiffs.
H. H. CUMMIN,
Counsel for Defendant.

41 (Endorsed:) No. 2. June term, 1877. The Cecil National Bank vs. The Watsontown Bank. Agreement for examiner. Filed April 27, 1877.

42 *Report of examiner.*

In the circuit court of the United States for the western district of Pennsylvania.

THE CECIL NATIONAL BANK OF PORT DEPOSIT, a citizen of the State of Maryland, and Jacob Tome, a citizen of the State of Maryland,
vs.
THE WATSONTOWN BANK, A CITIZEN OF THE State of Pennsylvania.
} No. 2. June T., 1877. In equity.

PLAINTIFFS' TESTIMONY.

Report of Addison Candor, examiner.

The examiner appointed by agreement of counsel to take testimony in the above-stated case respectfully reports: That he held a
43 meeting, pursuant to an agreement of counsel, at his office, in the city of Williamsport, Pa., on Thursday, September 21st, A. D. 1877, at 11 o'clock a. m.

Present, Messrs. Armstrong & Linn, counsel for complainants; H. H. Cummin and Oscar Foust, esq'r's, counsel for respondent.

SILAS RAMBACH, being sworn and examined on the part of the plaintiff:

I have with me the certificate of stock in dispute.
(Witness produces certificate.
Certificate offered in evidence, marked Exhibit No. 1, A. C.)
I am vice-president of the Watsontown Bank.

S. RAMBACH.

Sworn & subscribed before me the day & year aforesaid.

ADDISON CANDOR,
Commissioner.

44 Pl'ffs now offer in evidence the certificate No. 63. Two hundred shares, dated 23rd of January, 1874, to Powell & Co. Indorsed thereon a transfer, dated Feb'y 16, 1874, of Powell & Co., to Jacob Tome for the within stock.

(Defendant's counsel object, because it is not shown when the power of att'y, indorsed, was executed or filled up.)

JACOB TOME, being sworn and examined on the part of the plaintiffs, says:

I am president of the Cecil National Bank; I have been since May 11, 1850. It was a State bank and merged into a national bank in 1864, and has continued so until now.

(Exhibit No. 1 shown witness.)

This indorsement is signed by Powell & Co. It was executed
45 the 16th day of February, 1874, and it was delivered to me in February of that year (1874). It was delivered for collateral security for money loaned. It has continued to be my property from the date of its delivery until now. I held the certificate for the bank; they furnished the money. I held it until Jan. 31, 1876, when I forwarded it to the Watsontown Bank for transfer to myself, for the use of the Cecil National Bank. On December 4th, 1875, the bank made a discount of $5,000, for thirty days, for Powell & Co. On December 20, 1875, we discounted Powell & Co.'s note, endorsed by Peter Herdic, at forty days, for $5,000. Neither of these notes were paid. These notes continue to be the notes of the Cecil National Bank and remain unpaid. The notes which I now hold in my hand are the notes. The one Dec. 20, 1875, is protested; the one of Dec. 4, 1875, was not protested, as it had no indorser.

46 Plaintiff now offers in evidence note dated December 4, 1875, Powell & Co. to the order of "ourselves," endorsed "Powell & Co.," for five thousand dollars, at thirty days after date, secured by two hundred shares of the Watsontown Bank stock, hereto attached and marked Exhibit No. 2, A. C. Also note dated Dec. 20, 1875, Powell & Co. to order of P. Herdic, indorsed by him, for five thousand dollars, payable forty days after date, secured by deposit of two hundred shares of the Watsontown Bank stock, also the protest of the same thereto attached. The whole exhibit hereto attached and marked Exhibit No. 3, A. C.

The certificate was sent by mail to the Watsontown Bank on January 31st, 1876. It was sent by Robert C. Hopkins, esq., cashier of the Cecil National Bank. To the best of my knowledge and belief, the paper in my hand is a correct copy of the letter sent Jan'y 31, 1876, to the
47 Watsontown Bank, hereto attached and marked Exhibit No. 4, A. C.

I received an answer, or rather the bank received an answer. (Letter dated Feb. 1, 1876, signed R. B. Claxton, cashier, shown witness.) This is the answer received by the bank. Letter offered in evidence and hereto attached and marked Exhibit No. 5, A. C.

To the best of my knowledge, the letters addressed to R. B. Claxton, cashier Watsontown Bank, and signed J. Tome, are correct copies of the original letters mailed to Mr. Claxton, and dated, respectively, Feb'y 9, 1876; Feb'y 14, 1876; Feb. 26, 1876; May 8, 1876; May 19, 1876. Also, letter dated April 24, 1876, signed J. Tome, addressed to Oscar Foust, esq. This, to the best of my knowledge and belief, is also a correct copy. I wrote this in reply to the letter of April 14, 1876, from Oscar Foust, esq., att'y for Watsontown Bank.

48 The letters signed R. B. Claxton, cashier, and addressed to R. C. Hopkins, cashier, and J. Tome, respectively, are the letters received by the bank upon the subject of this stock.

Pl'ffs now offer in evidence letters above referred to, marked Exhibits No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, No. 17, and No. 18.

(Defendants' counsel object to Exhibits 4–18, inclusive—

I. Because the letters purporting to be copies are not legally proven.

II. Because the letters are not evidence to bind the defendant.

III. Because irrelevant.)

Plaintiffs' counsel now give notice to Mr. Silas Rambach, vice-president of the Watsontown Bank, now president, and to H. H. Cummin, esq., and Oscar Foust, esq., attorneys for defendant, to produce the original letters, copies of which have been put in evidence, namely,

49 Exhibits Nos. 4, 6, 7, 8, 9, 10, and 11. Also letter of R. C. Hopkins, cashier, addressed to R. B. Claxton, cashier, dated Feb'y 3, 1876. Also letter R. C. Hopkins, cashier, to R. B. Claxton, cashier, dated Feb'y 7, 1876. Also all letters addressed to the Watsontown Bank or any of its officers by the cashier of the Cecil National Bank or J. Tome, touching the two hundred shares of stock in controversy.

Witness proceeds.

Part of the stock contained in that certificate of stock was sold; twenty shares were sold, and the proceeds remitted to me by letter from R. B. Claxton, cashier, dated Feb'y 21st, 1876, being Exhibit No. 16. I stopped at the bank on the 13th of April, 1876. I went in and asked for the cashier; we went into the back room, spoke to him about the stock, he said he had sold no more; then some three or four gentlemen came in. I was introduced. Two of these gentlemen were Mr. Rambach and Mr. Caldwell. They asked me about the stock; I told them

50 I held it as collateral from Powell & Co. They asked me whether I would take 75 per cent., which would be 37½ per share; said I would not sell for that, as I held it *at* as collateral at par, and that that which was sold was sold at one hundred and five. They never claimed ownership or said anything about it when I was there. I did not know that they were directors. I don't recollect whether the cashier introduced them to me as directors or not, but it is a common usage to so introduce. There were other things talked about concerning bank business, and I think they were introduced as directors.

Cross-examined by H. H. CUMMIN, Esq., of counsel for defendant.

The certificate of stock came into my possession in February, 1874. I then held it as collateral security for money loaned.

51 The money upon which the stock was held as collateral was not all paid. The money loaned was upon a note by Powell & Co. to their own order. The first loan was in Feb'y, 1874. That paper I think was to run six months. I am not sure. It was either four or six months. I think the first loan was ten thousand dollars; either

eight or ten thousand. I could not say positively which. I think the most of that note was paid when it became due. Part of it was anyway. There was a new note sent or a new loan made for the balance. My custom is always to have notes paid off and make a new loan. I could not exactly tell the amount of the new loan, but it never was less than five thousand dollars. There never was any endorser except the maker on the new loan. I could not tell the length of time the note
52 was to run. I think it was four months. I can't say whether it was paid off at maturity or a new loan made. I can't tell whether or not this new loan was paid off entirely at any time.

The Cecil National Bank is the owner of the note marked Exhibit No. 2.

No other person or corporation has any interest or property in it. The whole of the money was advanced on this note, less the discount. I could not tell you how much the discount was. I could not tell the rate of the discount. Neither I nor the Cecil National Bank hold any other security for it. Part of it has been paid by the sale of twenty shares of stock by Mr. Claxton. The payment amounted to one thousand and forty-eight & $\frac{75}{100}$ dollars. The payment was made on
53 Feb'y 21st, 1876. Nothing else has been paid on that note. That note was discounted at the instance of Powell & Co.

The Cecil National Bank is the owner of the note marked Exhibit No. 3.

This note was discounted at the instance of Peter Herdic. The proceeds of the note, I think, were paid on a draft of Peter in favor of Powell & Co. I have not that draft, and could not tell whether or not it is in the possession of the bank.

(Defendant's counsel request the witness to produce the draft just spoken of by him if the same can be found.)

Witness desires to say in answer to this demand: I don't think this draft can be found, as I never keep them. They are never kept by the bank. Witness proceeds: I could not tell what was the amount of the proceeds of this note. I could not tell to whom the money was paid or sent. I do not know at what rate it was discounted. No
54 part of this note has been paid. No effort has been made to collect the whole or any part of it from the endorser. The endorser has paid not part of it. He has been asked to pay it. I would not have loaned the money but for the endorsement of Peter Herdic. I would not have loaned the money unless I thought the money could be collected from the endorser. I think the endorser is good for the amount of the note. This note was sent by mail by Peter Herdic to me for discount. I can't say to whom I sent the proceeds, after I received the draft; for sometimes Powell & Co. ordered the proceeds to be sent to Philadelphia, and sometimes to Williamsport. I think it was Mr. Calwell who asked me, when I was at the Watsontown Bank, whether or not I would take 75 per cent. for the stock.

55 Question. Did you not first propose to take seventy-five cents on the dollar for the stock?

Answer. No, sir; I think not; I know I did not.

Question. Did not the persons with whom you were talking at that time refuse to give you seventy-five cents on the dollar for your stock?

Answer. They did not make me any offer, and I never offered it less than par to anybody.

Question. State whether or not what was said at that time, in rela-

tion to the value of the stock by all the parties, was not done in a jesting manner.

Answer. I could not tell whether they were jesting or not; only I know that I was not.

Question. Had you not all been talking and jesting about the values of stocks at that time?

Answer. I can't say.

56 Re-direct:

The first notice that I had that the Watsontown Bank made any claim upon the stock, was by the letter of Mr. Foust, dated April 14, 1876, which, by reason of my absence from home, I did not receive until the 23d or 24th of April, and to which I replied on the 24th of April. The Cecil National Bank is organized under the laws of the United States, and has been doing business at Port Deposit, in Maryland, since, 1864. I live at Port Deposit, and have lived there forty-five years.

J. TOME.

Sworn and subscribed before me, the day and year aforesaid.

ADDISON CANDOR,
Examiner.

57 MARTIN POWELL being sworn and examined on the part of the plaintiffs, says:

I was a member of the firm of Powell & Co. The business of Powell & Co. was a banking business, carried on in Williamsport. Powell & Co. were the owners of two hundred shares of the capital stock of The Watsontown Bank, for which Powell & Co. held certificate marked Exhibit No. 1. I transferred this stock to Mr. Tome, on the 16th of Feb'y, 1874. It was sent down to Mr. Tome by mail, from Williamsport, within a few days or at that time. I made a loan from Mr. Tome on that stock as collateral. The proceeds of the first loan we received on that stock, was received by Powell & Co. at Williansport, on February 24, 1874. The first note was at four months, for five thousand dollars, upon which, when it fell due, we paid one thousand
58 dollars. It was renewed twice afterwards for four thousand dollars, at four months, and then the amount was increased to five thousand dollars on the note marked Exhibit No. 2, and has remained in their hands unpaid.

There was another note discounted by the Cecil National Bank upon the strength on that stock and Mr. Herdic's endorsement, dated Dec. 20, 1875, at forty days, for five thousand dollars, being Exhibit No. 3.

This discount was made for the benefit of Powell & Co. It was endorsed by Mr. Herdic, at our request, and for our benefit entirely. Powell & Co. received the whole of the proceeds of this note, less the discount.

Powell & Co. did not directly pay either of these notes.

Question. What instruction, if any, did you give to Mr. Tome
59 respecting the two hundred shares of the Watsontown Bank stock.

(Defendant's counsel object—

I. Because it is not evidence to bind the defendant in the issue.

II. Because irrelevant.)

Answer. We requested him to sell it, and to deduct his note from the proceeds, and to remit us the balance. This was at the time that the note of Dec. 4th, Exhibit No. 2, was given. The note was made at a

shorter time, because we thought he could sell the stock and save us from paying interest.

The note of Dec. 20th, was drawn at forty days, partly for the same reason, and because we thought we would not need it longer than that time. The first time I transferred this stock was on Nov. 29, 1873, to the Manufacturers' National Bank of Philad'a. At the day
60 of election I informed them that I had used it for collateral. The day of election I refer to was in January, 1874. I did not notify them formally, but notified one or more of the directors. The Manufacturers' National Bank of Philad'a redelivered the stock to me in January, 1874. I then took out a new certificate, which is Exhibit No. 1. I never informed the directors formally, but informed some of them, I think, at the election in January, 1875, that the stock was still out as collateral. I voted on it at the January meeting, 1875.

Cross-examined by H. H. CUMMIN, Esq., of counsel for defendant:

In Feb'y, 1874, Powell & Co. were composed of R. B. Claxton, jr., Oliver Evans, and Martin Powell.

In Dec. 4 and 20, 1875, the firm remained the same, only the name of R. S. Bailey was added to it.

The R. B. Claxton, jr., who was a member of the firm of Pow-
61 ell & Co., was at that time cashier of the Watsontown Bank. I signed the signature of Powell & Co. to the transfer, on the back of Exhibit No. 1.

The transfer was executed by me in blank. I do not know when or by whom it was afterwards filled up. Powell & Co. received the dividends on the stock in 1875 and 1876. They voted the stock in 1875 & 1876. I am unable to say whether or not a new certificate was issued to the Manufacturers' National Bank. I don't think they gave me any proxy to vote while they held the stock. I voted the stock in 1874, I think, while they held it as collateral. Exhibit No. 2 is in the handwriting of Mr. R. S. Bailey and signed by him. I don't recollect what was the amount of the proceeds received by Powell & Co. on this note. I don't recollect at what rate it was discounted. I think it was at six per cent., and
62 exchange, which is equivalent to nine per cent.; it was not greater than that. Exhibit No. 3 is in my handwriting, and signed by me. I don't recollect what were the proceeds of that note. It was discounted at the same rate. Mr. Herdic drew a draft for the proceeds of that note on the Cecil National Bank, and gave it to me for the use of Powell & Co. We sent it to the Manufacturers' National Bank, of Philad'a, I think, for our credit. Our books would show that.

In the transactions between Powell & Co. and the Cecil National Bank in 1874, and up to the time Exhibit No. 2 was made, the renewals and charges in the papers were promptly made at the maturity of the several papers. I cannot name the directors to whom I mentioned that the stock was transferred as collateral in 1874 nor in 1875. I remember distinctly to have mentioned it to them in 1874. I don't
63 remember, but think I most certainly did mention it to them in 1875, because I thought I did not have the right to vote. I did not say anything about it 1876, as I had voted it the previous years.

Re-direct:

Mr. Claxton continued to be a member of the firm of Powell & Co. up to 22d of Jan'y, 1876.

Question. State whether or not Mr. Herdic was an accommodation endorser on note marked Exhibit No. 3.

(Def'ts' counsel object, because irrelevant.)

Answer. He was an accommodation endorser, and endorsed it at my request.

The firm of Powell & Co. failed on March 12, 1876, and made
64 a voluntary assignment on April 13, 1876, for the benefit of their creditors.

When I was dealing with Mr. Tome I was aware that I was dealing with the Cecil National Bank.

MARTIN POWELL.

Sworn and subscribed before me, this 27th day of September, A. D. 1877.

ADDISON CANDOR,
Examiner.

R. B. CLAXTON, jr., being sworn and examined on the part of the plaintiffs, says:

I became cashier of the Watsontown Bank on Jan'y 1, 1874, and left the bank in Oct., 1876.

Exhibits Nos. 5, 12, 13, 14, 15, 16, and 17 shown witness.

These letters are in my handwriting, both the body of the letter and the signature.

I received on Feb'y 1, 1876, as cashier of the bank, a letter
65 from R. C. Hopkins, cashier of the Cecil National Bank, containing a certificate which is Exhibit No. 1.

The certificate when received contained the power of attorney endorsed thereon and filled as it now appears. When I received the certificate I made the necessary entries on the stock ledger, and acknowledged receipt of same. I made them then or soon after.

Question. State more at length what entries you made, and in what books.

(Def'ts' counsel objects.

I. Because it is not the best evidence.)

Answer. I credited Jacob Tome in the stock ledger, and charged Powell & Co. with the whole number of shares embraced in the certificate.

Question. State whether or not this was in accordance with
66 the practice of the bank in transferring shares of stock.

(Objected to by def't's counsel.

I. Because it is not shown that the stock was ever transferred on the books of the Watsontown Bank.

II. Because the books themselves are the best evidence of the practice of the bank in such matters.)

Answer. It was.

Question. After the entries were made on the books as you have stated, whom did you, as cashier of the bank, recognize as owner of the stock?

(Def'ts counsel object, because wholly irrelevant.)

Answer. Jacob Tome.

67 Question. After the transfer so made, who was entitled to vote that stock?

(Def't's counsel object:

I. Because the stock was never transferred in the books of the Watsontown Bank, and the opinion of the witness is irrelevant.)

Answer. I had intended to state that I thought this irrelevant, but I am not judge of that question, but it was the custom to vote according to the stock ledger. I made sale of part of that stock. I don't remember to whom I sold it. The books will show. When that stock was sold I credited the party purchasing the stock, and debited Jacob Tome on the stock ledger. I think I issued a certificate to the
68 purchaser. I am speaking of the stock, the proceeds of which I remitted to Mr. Tome, of Port Deposit, by my letter of Feb. 21, 1876, marked Exhibit No. 16.

Question. State whether or not the Cecil National Bank, through their cashier, Mr. Hopkins, or their president, Mr. Tome, made demand for a certificate for the two hundred shares embraced in the certificate marked Exhibit No. 1, to be made out in name of Jacob Tome.

Def't's counsel ask witness whether such demand was in writing or not.

Witness answers: It was in writing.

(Def't's counsel now object to the question.

I. Because the writing is the best evidence, and must speak for itself.)

Answer. They did, or Jacob Tome did.

69 Question. After the twenty shares referred to in Exhibit No. 16 were sold, was demand made on behalf of the bank by the cashier or president for a certificate to J. Tome for the balance?

Def't's counsel ask the witness whether such alleged demand was in writing or not.

Witness answers: It was in writing.

(Def't's counsel object to the question as before.)

Answer. There was, either by them or by J. Tome.

Those demands were in writing. I do not know what became of them. That last I knew of them they were in the custody of the bank.

Question. Why was not a certificate for two hundred shares
70 forwarded to Mr. Tome in pursuance with the demand of which you have spoken?

(Def't's counsel object:

I. Because the question seeks for an answer which the witness could not know, unless it relates to the reason why he himself did not send them.

II. Because irrelevant.)

Answer. The first request was not complied with because I did not have the signature of the president on a blank certificate.

Question. Was it or not the practice of the bank for the president to sign blank certificates of stock and leave them in your custody to be used as required?

(Def't's counsel object because irrelevant.)

71 Answer. It was.

Question. If a blank certificate so signed had then been in the bank, would you or not have sent a new certificate for the stock to Mr. Tome, as requested, upon the receipt of the certificate and transfer of which you have spoken, being Exhibit No. 1?

(Defendant's counsel object:

I. Because it is not evidence to bind the plaintiff in the issue.

II. Because irrelevant.)

Answer. I think I would, though, in a transfer of so large an amount, I might have consulted some of the directors.

Question. If such new certificate had been forwarded by you, would it or not have been within your recognized powers as cashier?

72 (Def't's counsel object:

I. Because the witness is asked to state a conclusion of law, on which subject he is not called as an expert.

II. Because his answer is no sort of evidence in this issue.

III. Because irrelevant.)

Answer. In my opinion it would.

Question. State if it was your habit to make new certificates of stock upon similar transfers of stock.

(Def't's counsel object as before.)

Answer. It was.

Question. Was such practice known to and recognized by the directors?

(Defendant's counsel object as before.)

Answer. It was.

73 The directors of the Watsontown Bank knew that I was a member of the firm of Powell & Co., and it is my belief that they knew of it during all the time I acted as their cashier, while I was a member of the firm. I cannot remember any distinct communication on the subject, but it was frequently spoken of between me and the directors.

Question. State what was the market value per share of the capital stock of the Watsontown Bank on the first of February, 1876.

Answer. On or about that time, it was sold for fifty-two dollars and one-half per share, or near that figure. The par value of the stock is fifty dollars. I am not able to state its present value.

Cross-examined by H. H. CUMMIN, Esq., of counsel for defendants:

74 I can't say that I consulted the directors with reference to any of the letters written by me with reference to this stock; nor did I consult the officers, except as to letter marked Exhibit No. 17. I did not consult the directors nor the officers of the bank with reference to the entries made by me on the stock ledger. I did not make a transfer of the certificate of stock upon the stub in the certificate book. I never made any such transfers on the stub in reference to any stock. It was sometimes my practice to make entries on the stock-ledger before issuing new certificates, and I generally did it. It was not my practice upon the return of an old certificate with a transfer endorsed, to cancel the old certificate and note the number of the new one issued therefor. I sold the stock by virtue of a power of attorney.

75 (Paper dated Ap'l 14, 1876, signed by J. Tome, shown witness, hereto annexed, and marked Exhibit No. 19.)

This paper is the power of attorney under which I sold the stock.

I could not tell how many transfers of stock I made while I was cashier. I transferred stock to various amounts. I think I may have transferred as much as fifty shares at one time. I made so many I cannot recall. I made one from somebody to Samuel Caldwell. I do not remember the amount.

Question. By what means do you fix the market value of this stock as fifty-two and one-half dollars per share, Feb'y 1st, 1876?

Answer. It was sold at about that figure about that time. I

76 cannot say by whom or to whom such sale was made without reference to the books. I do not remember how many sales I knew of at that time at that price. I think more than one. I cannot

say how many shares were sold at that time at that price. To the best of my memory there were transfers of from five hundred to one thousand dollars' worth. All transfers appear upon the books.

Question. Was it your practice to make transfers of stock while the persons in whose name it stood upon your books were indebted to the bank for debts due and unpaid?

(Pl'ff's counsel object:

I. Because it is not proper cross-examination.

II. Because the defendant cannot, at this time, introduce new
77 matter of defence, or introduce his case on cross-examination.)

Answer. I cannot remember any specific instance, though it might likely have happened.

Question. State whether you were instructed by the officers of the Watsontown Bank, or the directors, not to permit a transfer of the stock in question while there was any debt due and unpaid from Powell & Co. to the bank?

(Pl'ff's counsel object for the reasons above stated.)

Answer. I was at about the time of my letter to Mr. Tome marked Exhibit No. 17.

In chief:

Exhibit marked No. 19 shown witness. This power of attorney was left in the custody of the bank. It was produced to-day by the
78 officers of the bank. It was placed among the papers in this case. The copies of the letters I wrote were not preserved in the bank unless possibly Exhibit No. 17.

I cannot say whether or not all the letters received by the bank were filed with the papers. They were left in the custody of the bank by me. It was my business, as cashier of the bank, to keep the stock ledger and certificate book. The bank had no distinctive transfer book, except the stock ledger. It was my business, as cashier, to have charge of all the books of the bank, without consultation with the directors, except in cases where I was specially instructed by them.

R. B. CLAXTON, JR.

Sworn and subscribed before me, this 27th day of September, A. D. 1877.

ADDISON CANDOR,
Examiner.

79 Adjourned to meet October 25, 1877, at 10 o'clock a.m.

October 25, 1877, met pursuant to adjournment.

Present: Hon. Sam'l Linn, of counsel for complainants; H. H. Cummin and Oscar Foust, esq., counsel for respondent.

Defendant's counsel produce the original letters called for by the plaintiff, on page 4, printed evidence, and admit that Exhibits Nos. 4, 6, 7, 8, 9, 10, & 11, as printed, are correct copies of the same letters which they now produce, and agree that the printed copies may be read in evidence with the same effect as if the original letters had been produced.

80 Defendant's counsel produce, before the examiner, in obedience to request of plaintiff's counsel, the following of their books:

1 certificate book.
1 stock ledger.
1 discount register.
1 general ledger.

Plaintiff's counsel offer in evidence the stock ledger of defendants, produced by them, showing an account with The Manufacturer's National Bank of Philadelphia, on page 70.

Also, same book showing same stock as entered on page 70, credited to Powell & Co., on page 42, on Jan'y 23, 1874.

Also, same book, showing account of Powell & Co., in which it appears that the stock account entered in the account of The Manufacturer's National Bank of Philadelphia, is credited to Powell & Co., on Jan'y 23, 1874, and charged to them Feb'y 4, 1876, as being
81 transferred to J. Tome, on page 42.

Also, account of J. Tome, on same ledger, on page 47, in which he is credited on Feb'y 4, 1876, by Powell & Co., with same stock, and charged, on the 21st of February, 1876, to Henry Scott, $500, and to A. Scott, $500.

Also, same book, page 5, the account of Henry Scott, in which he is credited, Feb'y 21, 1875, by J. Tome, $500.

Also, same book, page 92, the account of Amos Scott, in which he is credited, Feb'y 21, 1876, by J. Tome, $500.

Hereto attached and marked Exhibits No. 20, 21, 22, 23, & 24, A. C.

(Defendant's counsel object:

I. Because it is not shown by whom the entries were made which are offered in evidence.

II. Because it is not shown that the entries offered were made by the defendant, or by any one authorized to make them for the de-
82 fendant, and they are, therefore, not binding upon the defendant.

III. That even if properly established, they do not constitute a transfer of the stock in question to bind the defendant in this issue.

IV. Because irrelevant.)

Plaintiffs rest.

DEFENDANTS' EVIDENCE.

Defendants' consel offer act of assembly entitled "An act to incorporate the Watsontown Bank," approved on the 27th day of March, 1872, pamphlet laws of 1873, page 1043, under which the corporation defendant was organized.

Defendants' counsel offer an act assembly entitled "An act
83 regulating banks," approved April 10, 1850, pamphlet laws, page 478, and particularly sections No. 1 and No. 10 of said act, which are as follows:

SECTION 1. "That every banking corporation hereafter created by any special act of general assembly, etc., shall be subject to the provisions of this act."

SECTION 10, ARTICLE 10. "The stock of the bank shall be assignable and transferable on the books of the corporation only and in presence of the president or cashier, in such manner as the by-laws shall ordain, but no stockholder indebted to the bank for a debt actually due and unpaid shall be authorized to make a transfer or receive a dividend until such debt is discharged or security to the satisfaction of the directors given for the same."

84 SAMUEL CALDWELL, being sworn and examined on the part of the defendant, says:

I reside in Watsontown, Penn'a; I am president of the Watsontown Bank at the present time; I have held that office since Jan'y, 1877;

previous to that time I held the offices of director and vice-president; I was director from the date of the organization of the bank; I was elected vice-president about January, 1874, and I held that office until I was elected president. While I was vice-president Ario Pardee was president of the bank. He resided in Hazelton, Penn'a.

Question. State how frequently Mr. Pardee, as president, visited the bank.

(Objected to by counsel for pl'ff because irrelevant.)

Answer. Not over once a year, to the best of my knowledge.

85 In his absence I acted as president. I was from week to week elected president pro tem., previous to my being elected vice-president. While I acted as vice-president I was at the bank about twice a week on the average. Our bank had eight directors. January, 1876, our directors were Samuel Caldwell, Silas Rambach, Charles Heilman, John B. Leinbach, P. D. Shaffer, Ario Pardee, John H. Goodman, and Joseph Nicely, jr. At the election in January, 1876, T. D. Shaffer and Joseph Nicely, jr., went out, and Thompson Bower and John P. Dentler came in in their places. Our directors met once a week—on Mondays.

Question. Please state when you first heard that Jacob Tome or the Cecil National Bank of Port Deposit claimed to be owners of any of the stock of your bank.

86 (Objected to by plaintiff's counsel because irrelevant.)

Answer. I knew nothing of their owning it until Mr. Tome was up there at Watsontown—I mean his visit of April 13th, 1876.

Question. When did you first know that any of the stock of the bank had been transferred to Amos Scott and Henry Scott.

(Objected to by counsel for plaintiff because the books of the defendant show that such transfer had been made, and the question as to when witness knew of it is entirely irrelevant.)

Answer. Not until after this suit was commenced.

Question. State what occurred on the 13th day of April, 1876, when Jacob Tome visited the bank.

87 (Objected to by counsel for plaintiffs, because the question does not point to any interview with any of the directors of the bank, nor with any one authorized to act for them.)

Answer. On that day, about two o'clock in the afternoon, Mr. Tome came to the bank; there were present there Mr. Rambach, Mr. Goodman, and myself, all directors, also the cashier and the teller were in the banking-house. Mr. Tome wanted to know the standing of the bank, which we stated to him as briefly as possible, and he said that he owned $10,000 worth of the stock, and he wished to know what it was worth; he stated that he got it as collateral for that amount of money lent Powell & Co. He stated that he held Mr. Herdic as endorser besides the collateral, I understood him, for the whole amount. I don't

88 know that he asked to have the stock transferred to him at that time. He remained there not more than half an hour; he appeared to be in a hurry. I think I asked him then if he would take seventy-five per cent. for his stock, not however intending to give it. We had been talking about the Beaver Mills and Lumber Co. bonds and Mr. Tome offered us seventy-five per cent. for our bonds of The Beaver Mills & Lumber Co. and I asked him if he would take the same for his bank stock, and that is the way that offer came about. Mr. Oscar Foust was attorney for the Watsontown Bank. I have seen Exhibit No. 18.

Question. Please state whether that letter was written and sent in

pursuance of directions given by the board of directors or by yourself as vice-president to Mr. Foust.

89 Plaintiff's counsel inquires if there was a meeting of the board and a resolution passed and committed to writing in reference to his authority.

Witness answers: There was no resolution passed by the board which was committed to writing.

Answer. It was—the direction was given by myself and the number of directors we could get there. I think there was three or four. We directed him verbally. I have seen the printed copies of letters in this case purporting to be signed by R. B. Claxton, cashier, and by J. Tome and by R. C. Hopkins.

Question. Please state whether as vice-president of the Watsontown Bank you knew that any of the said letters purporting to be

90 signed by Claxton had been written and sent by him, or that any of the letters signed R. C. Hopkins or J. Tome had been received by him or by the bank.

(Objected to by as irrelevant, the knowledge of the witness of the matters inquired of being of no importance in this case.)

Answer. No; I did not know anything of the letters until after the middle of April, 1876.

Question. Please state whether you or the board of directors authorized R. B. Claxton, cashier, or directed him to write any of the letters offered in evidence, except the letter Exhibit No. 17, purporting to have been written by him.

(Objected to by counsel for pl'ffs because the question is irre-

91 levant and the books of the bank showing entries in accordance with the matters contained in the letters, and crediting Mr. Tome with stock contained in the certificate transferred by Mr. Powell, it is incompetent for defendant to ask this witness whether Mr. Claxton was directed or authorized as cashier to write the letters referred to, and to prove by him his want of authority to carry on the correspondence with Mr. Tome with reference to the stock. This testimony on the part of the defendant is incompetent and cannot be allowed, especially as it appears from the books that the sales made by Claxton of Mr. Tome's stock, made in pursuance of the correspondence, were duly entered in the books of the bank at or about the time said sales were made.)

92 Answer. Neither I nor they authorized him, nor knew of his writing any of the letters, except Exhibit No. 17.

Question. State whether you or any of the directors, to your knowledge, authorized or knew of the entries made in the stock ledger relating to the transfer of the stock in question to Tome or to Henry Scott, or to A. Scott.

(Objected to because it is irrelevant in so far as concerns the liability of the bank in this case; the knowledge of the entries having been made is wholly unimportant, the same having remained on the books until the present time and no notice having ever been communicated to Mr. Tome, or to the Cecil National Bank, of any want of authority

93 in Mr. Claxton to make the negotiations contained in the correspondence, until writing the letter by Mr. Foust, purporting to be by authority of the bank; that the witness cannot speak of the knowledge of any one but himself, and the testimony offered, if received, cannot in any way effect the rights of the plaintiffs.)

Answer. We did not know of them until about the middle of April, 1876. I only speak to my own knowledge. I have no knowledge that the other directors knew of the entries before that time.

Powell & Co. and the Watsontown Bank did considerable business with each other. It consisted of notes discounted for Powell & Co. and for notes discounted for other people which they brought there. They were collection accounts between us.

Adjourned to meet December 20th, 1877, at 10 o'clock a. m.

94 DECEMBER 20, 1877.

Met pursuant to adjournment.

Present: Messrs. Armstrong & Linn, counsel for complainants; H. H. Cummin and Oscar Foust, esq'r's, counsel for respondent.

SAMUEL CALDWELL proceeds:

I am now able to give a correct list of the directors of the Watsontown Bank for the years 1875 and 1876. The directors elected in 1875 were Samuel Caldwell, A. Pardee, Martin Powell, Peter D. Shaffer, Joseph Nicely, jr., S. Rambach, Simon Schuyler, and John B. Leinbach. The directors elected for 1876 were Samuel Caldwell, Silas Rambach, Thompson Bowen, John B. Leinbach, Charles Heilman, Martin Powell,
Amo. Pardee, and John H. Goodman. The elections for the bank
95 were held on the last Mondays in January. The directors hold their office for one year subsequent to resignation.

Cross-examined:

The meetings were held in the banking-house at Watsontown. Mr. Pardee resided at Hazelton, Penn'a. The directors had free access to the books of the bank, including the books kept by the cashier.

I did not know that Henry Scott or A. Scott had purchased the stock until after the 13th of April, 1876.

I did not know that Amos Scott was a stockholder in the bank until the last part of April or probably in May, 1876. I cannot tell how I became cognizant of the fact. I suppose it was through the books.

96 SAMUEL CALDWELL.

Sworn and subscribed before me this 20th day of December, A. D. 1877.

ADDISON CANDOR,
Examiner.

Defendants' counsel now offer an act of assembly entitled "A further supplement to an act regulating banks, approved April 16, 1850," approved May 7, 1855, P. L., 1855, page 508.

CORRECTION OF ERROR.—Def'ts' counsel desire to correct an error in the figures in paragraph 8 of the answer, as follows:

The statement of the balance due from Powell & Co to the bank on 13th of April, 1876, $8,796.40, should be $7,121.40, the error having been inadvertently made by counsel.

97 GEO. W. RAMBACH, being duly sworn and examined on the part of the defendant, saith:

I reside in Watsontown. I am cashier of the Watsontown Bank, and as such I have charge of the books of the bank. I have brought here to-day the general ledger, journal No. 5, discount register No. 1, stock ledger, certificate book, and minute book. The books which I have brought show the account of the Watsontown Bank with Powell & Co. I have made a statement of the account of Powell & Co. with the

Watsontown Bank, showing the balance due the Watsontown Bank on Jan. 28, 1876. In this statement I give each item of charge and credit as it appears on the books. This copy of account begins Oct. 15, 1875.

I began the statement at that day because the account was
98 balanced on that day. The statement is a correct transcript from the books of the bank of what it purports to be.

(Statement hereto attached, and marked Exhibit No. 25, A. C. shown witness.)

This is the statement about which I have just been speaking. By this statement there is due $4,065.67 from Powell & Co. to the Watsontown bank on January 28, 1876. In addition to this there were two protested notes amounting to eleven hundred and fifty dollars, making a total due to the bank from Powell & Co., on that day, $5,215.67.

The two notes of which I speak, one was of J. Marshall & Co.

(Note and protest hereto attached, and marked Exhibit No. 26, A. C., shown witness.)

99 This is one of the notes held by the bank at that time. The other was note of A. T. Nichols & Co.

(Note and protest hereto attached, and marked Exhibit No. 27, A. C., shown witness.)

This is the other note of which I speak.

The Marshall & Co. note was discounted for Powell & Co. The payment was guaranteed by them. The guarantee was in writing. I hold in my hand the paper guaranteeing the payment.

(Paper hereto attached, and marked Exhibit No. 28, A. C.)

Powell & Co. guaranteed the payment of the A. T. Nichols & Co. note by a guarantee in writing. I hold in my hand the paper guaranteeing the payment.

100 (Paper hereto attached, marked Exhibit No. 29, A. C.)

Both these notes were discounted for Powell & Co., and they got the proceeds. They are still due and unpaid to the bank, and are held by them.

(Def'ts' counsel now offer Exhibits Nos. 25, 26, 27, 28, and 29 in connection with the books of the bank, as produced here.

Plaintiffs counsel object to the offer, because the books and statement offered are not competent evidence to establish the indebtedness of Powell & Co. to the bank, and because the notes together with the Exhibits Nos. 28 and 29 are not competent evidence to establish the indebtedness of Powell & Co. to the bank for the notes marked Exhibits Nos. 26 and 27. Because the whole offer is irrelevant.

101 Witness proceeds: I made another statement showing the indebtedness of Powell & Co. to the bank on April 13, 1876.

The current transaction between Powell & Co. and the bank ceased about a month previous. In making this statement, I begin at the balance as shown by Exhibit No. 25. It contains all the items in the account of Powell & Co. with the bank from that day forward. It is a correct transcript from the books of the bank.

(Paper shown witness hereto attached and marked Exhibit No. 30, A. C.)

This is the statement to which I refer. By the statement there appears to be due from Powell & Co. to the bank, April 13, 1876, $1,271.40. At this time there was also due to the bank from Powell & Co. the following:

102 The two notes, Exhibits Nos. 26 and 27, also the following:

Note of McCauley & Lowther & Co., due Feb'y 11, '76, for	$2,500 00
Note of Wm. H. Armstrong, due March 7, 1876, for	1,500 00
Note of A. T. Nichols & Co., due Feb'y 20, 1876, for	500 00
Note of J. A. Vanderslice, due March 2, 1876, for	200 00

Making a total balance due from Powell & Co. to the bank on April 13, 1876, of $7,121.40.

All these notes were discounted for Powell & Co., and Powell & Co. received the proceeds for them.

The Armstrong note was endorsed by Powell & Co., and the payment of all the rest was guaranteed by Powell & Co.

All these notes are now held by the Watsontown Bank. They have not been paid or any part of them.

The McCauley, Lowther & Co. is in the hands of H. T. Heinsling, att'y at law, Altoona, Penna., for collection.

(Paper shown witness hereto attached and marked Exhibit No. 31, A. C.)

103 This is the paper guaranteeing the payment of the McCauley, Lowther & Co. note.

(Paper shown witness, hereto attached, marked Exhibit No. 32, A. C.)

This is the note of Wm. H. Armstrong, to which I have referred, endorsed by Powell & Co.

(Paper shown witness, hereto attached, marked Exhibit No. 33, A. C.)

This is the note of A. T. Nichols & Co. for $500, of which I have spoken.

(Paper shown witness, hereto attached, and marked Exhibit No. 34, A. C.)

This is the letter of Powell & Co. guaranteeing the payment of the A. T. Nichols & Co. note of $500.00.

104 (Paper shown witness, hereto attached, and marked Exhibit No. 35, A. C.)

This is the Vanderslice note to which I have referred. It bears Powell & Co.'s No. 4057.

(Paper hereto attached and marked Exhibit No. 36, A. C., shown witness.)

This is the letter of Powell & Co. guaranteeing the payment of the note of Vanderslice, No. 4057.

(Defendant's counsel now offer Exhibits Nos. 30, 31, 32, 33, 34, 35, and 36 in connection with the books produced here.

Plaintiffs' counsel object for the reasons stated in objection to last offer.)

Cross-examined:

105 I became cashier in the first part of November, 1876. I was the immediate successor to R. B. Claxton, jr. I was in the bank before this time in capacity of teller from Jan'y, 1874; continued to act as teller until I was appointed cashier. From the time of resignation of R. B. Claxton until I was appointed I acted as cashier of the bank. The entries in the stock-ledger are in Mr. Claxton's handwriting.

I did not know of the fact of the transfers of the Tome stock at the time they were made; can't tell when I first became informed of it. I

never wrote in the transfer-book. Mr. Claxton did all the transfering of stock.

I have no other knowledge of the guarantees of which I have spoken except what appears on the papers as are here produced.

I have no other knowledge of the account between Powell &
106 Co. and the bank except as derived from the books and papers which are here produced in evidence.

In chief:

The entry of the guarantees of Powell & Co. were made in the discount register by R. B. Claxton, jr., who was then a member of the firm of Powell & Co.

Powell & Co. received the dividend on the stock in question of January, 1876. They also received all the dividends previous to that time. There have been no dividends declared since that time. Powell & Co. voted the stock at the elections in January, 1875, and in January, 1876. Powell himself was present and voted. The election in January, 1876, was on the 31st day of January.

G. W. RAMBACH.

Sworn and subscribed before me this 20th day of December, A. D. 1877.

ADDISON CANDOR,
Examiner.

107 JOHN H. GOODMAN, being duly sworn and examined on the part of the defendant, saith:

My residence is in Lewisburg. I do business in Watsontown, and have done so for the past ten years. I am in Watsontown during the entire week. I was a director of the Watsontown Bank in 1876 and 1877. It was about the time Mr. Tome was at Watsontown in April, 1876, that I first learned that plaintiffs claimed any of the stock of the Watsontown Bank. I think after Mr. Tome was there he told us that he held this stock as collateral security for a loan that he had made to Powell & Co. in two notes of different dates. After he told us this, and had left, we then examined the books and found that some of the stock had been sold. I think one thousand dollars' worth of the stock had been sold, and the proceeds remitted to Mr. Tome; if I re-
108 member right, at a little above par. I think it was sold to Scott. I think the books show it.

Cross-examined:

I was director when the bank started in 1873, and continued to be a director ever since, except during the year 1875. The bank went into operation in January, 1873.

JNO. H. GOODMAN.

Sworn and subscribed before me this 20th day of December, A. D. 1877.

ADDISON CANDOR,
Examiner.

J. B. LEINBACH, being sworn and examined on the part of the defendant, says:

109 I live between two and three miles east of Watsontown. I was a director in the Watsontown Bank from the time the bank was started, and am now.

Sometime after Mr. Tome had been at the bank, which was sometime in April, 1876, I first learned that the plaintiff' claimed to be the owners of some of the stock of the Watsontown Bank. It was about the same time that I first learned that any of this stock had been transferred to the Scotts.

Cross-examined:

The board had weekly meetings at the banking-house at Watsontown, Penn'a.

110 J. B. LEINBACH.

Sworn and subscribed before me this 20th day of December, A. D. 1877.

ADDISON CANDOR,
Examiner.

Adjourned to meet Feb'y 14, 1877, at 10 o'clock a. m.

111 Feb'y 14, 1878. Met pursuant to adjournment.

Present, Hon. W. H. Armstrong, of counsel for complainants; H. H. Cummin and Oscar Foust, Esq'rs, counsel for respondent.

JOHN PIATT, being sworn and examined on the part of the defendant, saith:

I was deputy sheriff of Lycoming County for the years 1875, 1876, and 1877. I have been connected off and on with the sheriff's office for about thirty years, either as sheriff or deputy. I know N. P. Davidson & Co., John Ransom, A. T. Nichols & Co., E. D. Trump, R. M. Forsman, John Vanderslice, and Theodore Hill.

All those parties were and are residents of this county, and were engaged in business here. I don't think there could have been
112 anything collected by legal process from any of these parties since the early part of 1876. We sold out the personal property of N. P. Davidson & Co., of A. T. Nichols & Co., and I think the household goods of R. M. Foresman. We had executions against Ransom, Vanderslice, and the other parties except Hill, but could find nothing to levy on.

No cross-examination.

JNO. PIATT.

Sworn and subscribed before me this 14th day of Feb'y, A. D. 1878.

ADDISON CANDOR,
Examiner.

113 Def't's counsel now offer note of McCauley, Lowther & Co., dated Nov. 8, 1875, for twenty-five hundred dollars, endorsed by T. McCauley, and protest attached, being note referred to in Exhibit No. 31.

Copy hereto attached and marked Exhibit No. 37, A. C.

Adjourned to meet May 21st, 1878, at 10 o'clock a. m.

114 May 21, 1878. Met pursuant to adjournment.

Present, Hon. W. H. Armstrong, of counsel for complainants; H. H. Cummin and Oscar Foust, Esqu'r's, counsel for respondent.

G. W. ROMBACH, being recalled by the defendant, saith:

Question. Please state what was the value of the stock of the Watsontown Bank per share on the 28th day of January, 1876, and on the

13th day of April, 1876, as shown by the books of the bank, taking into consideration the bad debts that were then owing to the bank.

(Counsel for plaintiff object, because it is irrelevant and does not tend to establish the market value of the stock.)

115 Answer. The value was about the same on both days. The value was forty-one dollars and four cents ($41.04) per share of fifty dollars, as we figured it up.

Cross-examined by counsel for plaintiffs:

We arrived at this result by taking notes that we supposed were uncollectible and deducting them from the amount of stock, and dividing it by the number of shares, which was forty-one dollars and four cents.

The capital stock of the bank was one hundred and twenty thousand dollars. The surplus was, on both days, thirty-eight hundred dollars. There were twenty-four hundred shares of the capital stock.

I made this calculation last evening. The notes I spoke of as uncollectible, some of them matured before and some after the 28th of

116 January, 1876, and the 13th of April, 1876.

The amount of the notes maturing after April 13, 1876, was thirty-one hundred and fifty-five dollars.

The note of McCauley, Lowther & Co. for $2,500.00, maturing Feb'y 11, 1876, was included in the uncollectible debts.

This information was confined to the books and officers of the bank.

We have been informed by our counsel that there is an award of arbitrators in our favor on the McCauley, Lowther & Co. note.

In making this calculation the surplus was added to the capital stock and the uncollectible debts deducted.

I was speaking of the value as shown from the books and not from the market value.

Redirect:

This stock was not quoted on any stock book. It was never

117 sold in any market that I know of.

We have been informed by counsel that an appeal has been taken from the award of arbitrators in the McCauley, Lowther & Co. suit, and that they are making a defence to the same.

Recross-examined:

The stock was bought and sold in the vicinity of Watsontown from time to time. I know of the sales spoken of by Mr. Claxton. I don't remember of any other sales about that time.

G. W. ROMBACH.

Sworn and subscribed before me this 21st day of May, A. D. 1878.

ADDISON CANDOR,
Examiner.

118 APPENDIX.

Plaintiffs' exhibits.

No. 1.

No. 63.] Watsontown Bank. [200 shares.

Capital, $100,000.

THE STATE OF PENNSYLVANIA:

This is to certify that Powell & Co. are entitled to two hundred shares

of the capital stock of the Watsontown Bank. Transferable in person or by attorney on the books of said bank, on the surrender of this certificate.

In witness whereof the president and cashier have hereunto attached their signatures and caused the seal of the bank to be affixed at Watsontown, Pa., this 23d day of Jan'y, A. D, 1874.

[SEAL.] A. PARDEE, *President.*

R. B. CLAXTON, JR., *Cashier.*

(On margin:) Shares, $50.00 each.

119 (Endorsed:) Know all men by these presents that we do hereby appoint R. B. Claxton, jr., cashier, attorney, irrevocable for us to transfer to Jacob Tome, Port Deposit, Md., of the within named shares, with power to appoint one or more attorneys under for that purpose.

Witness our hand and seal this 16th day of Feb., 1874.

POWELL & CO. [SEAL.]

Witness:

J. W. STURDIVANT.

120 EXHIBIT No. 2.

$5,000.] WILLIAMSPORT, PA., *Dec. 4th*, 1875.

Thirty days after date, we promise to pay to the order of ourselves five thousand $\frac{}{100}$ dollars, without defalcation, for value received, having deposited herewith certificate of two hundred shares of Watsontown Bank stock which we authorize the holder of this note, upon the non-performance of this promise at maturity, to sell either at the brokers' board or at public or private sale, without demanding payment of this note or the debt due thereon, and without further notice, and apply proceeds, or as much thereof as may be necessary, to the payment of this note, and all necessary expenses and charges, holding ourselves responsible for any deficiency.

Payable at .

Due .

POWELL & CO.

[Revenue-stamp.]

(Endorsed:) POWELL & CO.

121 EXHIBIT No. 3.

$5,000.] WILLIAMSPORT, PA., *Dec.* 20, 1875.

Forty days after date we promise to pay to the order of P. Herdic five thousand $\frac{}{100}$ dollars, without defalcation, for value received, having deposited herewith two hundred shares of the capital stock of the Watsontown Bank now held by J. Tome, which we authorize the holder of this note, upon the non-performance of this promise at maturity, to sell either at the brokers' board or at public or private sale, without demanding payment of this note or the debt due thereon, and without further notice, and apply proceeds, or as much thereof as may be necessary, to the payment of this note, and all necessary expenses and charges, holding ourselves responsible for any deficiency.

Payable at Cecil National Bank of Port Deposit.

Due .

POWELL & CO.

(Endorsed:) P. HERDIC.

Protested February 1st, 1876. Protest fee, $2.06.

122 EXHIBIT No. 4.—A. C.

(Copy.)

PORT DEPOSIT, MD., *Jan'y* 31, 1876.

R. B. CLAXTON, Esq., *Cashier, Watsontown, Pa.:*

DEAR SIR: Enclosed herewith you will find cert. 63, of your bank, for 200 shares, for which please send me new cert. in name of J. Tome.

Please say what this stock is worth.

Yours truly,

R. C. HOPKINS,
Cashier.

123 EXHIBIT No. 5.—A. C.

WATSONTOWN, PA., *Feb'y 1st*, 1876.

R. C. HOPKINS, Esq., *Cash., Port Deposit:*

DR. SIR: Your favor of 31 ult'o rec'd, with stated enclosure. A new board of directors was elected yesterday, who will organize on Monday, Feb'y 7th. A president will then be elected, and I will forward your stock certificate. Mr. Pardee, our present president, is not here, and I have no signatures on the stock-book. I think I can find a purchaser for Mr. Tome's stock at from 100 to 102, and possibly more. If you will let me know exact figures, I will endeavor to dispose of it promptly if he so desires.

Your early reply will oblige,

Truly yours,

R. B. CLAXTON, JR., *Cashier.*

124 EXHIBIT No. 6.

PORT DEPOSIT, *Feb'y 9th*, 1876.

R. B. CLAXTON, Esq., *Cashier, Watsontown, Pa.:*

DEAR SIR: Your favor of 8th inst. rec'd. Please retain certificates of stock, and sell them at $105.00, and remit proceeds to me, if you cannot get more. I wrote to Messrs. Powell & Co., Williamsport, that I sent them to you for sale as he had directed, but he had not fixed any price, but that it would bring 110 or 112 $. I wrote him to-night that I had wrote you to sell at $105.00. If he wanted more, would have to write you.

Yours,

(Copy.) J. TOME.

125 EXHIBIT No. 7.

PORT DEPOSIT, *Feb'y 14th*, 1876.

R. B. CLAXTON, Esq., *Watsontown, Pa.:*

DEAR SIR: Enclosed I send you power of att'y to sell and transfer the stock in your bank, and it will not be necessary to forward me a certificate. As fast as sold you can remit me for the same.

Yours truly,

(Copy.) J. TOME.

EXHIBIT No. 8.

PORT DEPOSIT, *Feb'y 26th*, 1876.

R. B. CLAXTON, Esq., *Cashier*, *Watsontown*, *Pa.:*

DEAR SIR: If you can get 8104 for the stock instead of 8105.00, and close up the sale and remit, you can do so. I want to have it closed as soon as you can conveniently.

Yours truly,

(Copy.) J. TOME.

126 EXHIBIT No. 9.

PORT DEPOSIT, *May 8th*, 1876.

R. B. CLAXTON, Esq., *Watsontown*, *Pa.:*

DEAR SIR: Having concluded to keep the bal. of my stock of your bank unsold, you will please forward me certificate for the same by return mail.

Yours truly,

(Copy.) J. TOME.

EXHIBIT No. 10.

PORT DEPOSIT, *May 19th*, 1876.

R. B. CLAXTON, Esq., *Cashier*, *Watsontown*, *Pa.:*

DEAR SIR: Your letter of 15th inst. is rec'd, declining to transfer the stock which you promised to do.

In reply, have only to say I shall proceed to make you do it.

Respectfully yours,

(Copy.) J. TOME.

127 EXHIBIT No. 11.

PORT DEPOSIT, *April* 24, 1876.

OSCAR FOUST, Esq., *Watsontown*, *Pa.:*

DEAR SIR: Your letter of 14th inst. was found upon my desk on my return home. In reply would say that when I sent the stock to the cashier for transfer he made no objection to it, but assigned as a reason for not sending me a certificate the absence of the president, and that on his return he would do so. Subsequently, when I directed him to sell the stock, I sent him, at his request, a power of attorney to do so, and under it he sold twenty shares, and remitted me the proceeds, adding that as I wanted to sell the stock, it would not be necessary to send me a certificate. I was at the bank on the 13th inst., and saw some of the directors and cashier, none of whom objected to a transfer of the stock to me, but, on the contrary,
128 they made me an offer for the balance of the stock. The price was not sufficient, and since I have concluded to keep it, and want a certificate for it. Assuredly after the cashier having offered me a certificate and then acting as my ag't in the sale of part of it without any objection from directors or officers, it cannot now be withheld and the stock applied to any other purpose than that for which I held it. It is too late to object now. Had it been done at first I might otherwise have secured myself. Entertaining these views unless the cer-

tificate for the balance of stock is made to me, I will have to take such steps as may be necessary to obtain it.

(Copy.)

Yours truly,

J. TOME.

129 EXHIBIT No. 12.

WATSONTOWN, PA., *Feb'y* 5, 1876.

R. C. HOPKINS, Esq., *Cashier, Port Deposit, Md.:*

D'R SIR: Your favor of 3d inst. rec'd and contents noted. I think I can now dispose of the stock @ 104 & 105, probably the latter figure. It will be impossible to place it all at once, and time may be required to dispose of it all. Our dividend was declared on Jan'y 1st. Since the dividend no paid stock has changed hands at 104.

If I find a purchaser for any part of Mr. Tome's stock I will advise you.

Truly yours,

R. B. CLAXTON, JR., *Cashier.*

(Written across the face:) A. Feb'y 9, '76.

130 EXHIBIT No. 13.

WATSONTOWN, PA., *Feb'y* 8, 1876.

R. C. HOPKINS, Esq., *Cashier:*

D'R SIR: In reply to your favor of 7th inst. I can only repeat what I said in my last letter. I think the stock can be sold (gradually) @ 105, and if you desire it will endeavor to sell at that price free of commission. It will take a little time to place it all, as our money matters here are very close now. It changed hands at that figure to-day. Awaiting your further instruction, I am,

Resp'y yours,

R. B. CLAXTON, JR., *Cashier.*

(Written across the face:) A. Feb'y 9, '76.

Mr. Pardee is not here. I am unable to issue a certificate of stock until I obtain his signature as president. He expects to be here in the course of the next ten days.

131 EXHIBIT No. 14.

WATSONTOWN, PA., *Feb'y* 11, 1876.

J. TOME, Esq., *Port Deposit:*

D'R SIR: Your favor of 9th inst. rec'd and contents noted. Please send me power of attorney to transfer stock. As fast as I dispose of it I will remit and advise you. If you prefer you can send power of attorney to an attorney, Oscar Foust, esq., or any member of our board. Mr. Pardee is not here and I cannot send you stock certificate till he comes. As you intend to sell it is useless to forward certificate. I think I have arranged for the disposition of $1,000 of it to-day, and will be as prompt as possible in placing the balance.

Your early attention will oblige,

Truly yours,

R. B. CLAXTON, JR., *Cashier.*

(Written across the face:) A. Feb'y 14, '76.

132 EXHIBIT No. 15.

WATSONTOWN, PA., *Feb'y* 16, 1876.

J. TOME, Esq.:

D'R SIR: Your favor of 14th inst. rec'd with p–a, as stated. I am now negotiating with several parties for the sale of your stock, and will report and remit promptly should I sell any stock.

Truly yours,

R. B. CLAXTON, JR.

133 EXHIBIT No. 16.

WATSONTOWN, PA., *Feb'y* 21, 1876.

J. TOME, Esq., *Port Deposit:*

D'R SIR: On 20 shares Watsontown Bank stock sold this day $1,050

Less exchange 1 25

I enclose $1,048 75

2497 on U. Co., Philad'a.

I have prospects of selling more very shortly.

Resp'y yours,

R. B. CLAXTON, JR., *Cashier.*

(Written across the face:) A. Feb'y 26, '76.

134 EXHIBIT No. 17.

WATSONTOWN, PA., *May* 15, 1876.

J. TOME, Esq.,

DEAR SIR: Your favor of 8th inst. was duly received and contents noted, and the same laid before our board of directors at their meeting to-day, and by them I am directed to say to you that they forbid my transferring the stock, because under the banking laws of this Commonwealth stockholders are not permitted to make transfers of stock so long as they are indebted to the bank, either as drawers, makers, or endorsers, or guarantors (for debts due and unpaid), and as this was the situation of Powell & Co. at the time you forwarded me the certificate, it comes within the prohibition, and they cannot approve or allow the same until the said debts are paid or secured to the satisfaction of the board of directors.

Regretting my inability to comply with your request, I am,

Truly yours,

R. B. CLAXTON, JR.

135 EXHIBIT No. 18.

WATSONTOWN, PA., *April* 14, 1876.

J. TOME, Esq., *Port Deposit, Maryland:*

MY DEAR SIR: Some time since you sent to our bank a certificate of stock originally issued to Powell & Co., and by them transferred to you, for $10,000.00. This transfer was never approved by our president or board of directors, and we will not do so, or cannot under the act of assembly regulating banks in this Commonwealth, so long as Powell & Co. are indebted to us either as drawer, maker, or endorser for matters

due and unpaid. And as this is the existing state of facts, we cannot permit a transfer to be made until we are secured to the satisfaction of our board of directors for all their (Powell & Co.) liabilities.

Yours truly,

OSCAR FOUST,
Att'y for Watsontown Bank.

136 EXHIBIT No. 19, A. C.

Know all men by these presents that I, Jacob Tome, of Port Deposit, Maryland, do constitute and appoint R. B. Claxton, of Watsontown, Pennsylvania, my true and lawful attorney for me, and in my name, to sell, transfer, and assign the two hundred shares of stock of the Watsontown Bank standing in my name in the books of said bank, and to do all necessary acts to effect the premises, hereby ratifying and confirming all my said attorney may lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand and seal this fourteenth day of February, 1876.

J. TOME. [SEAL.]

Witness:
W. W. HOPKINS.

137 EXHIBIT No. 20.

DR. *Manufacturers' Nat'l Bank, Phil.* CR.

'74.		1873.	
Jan'y 23. To Powell & Co., 42	10,000 00	Nov. 24. By Powell & Co., 42	10,000 00

EXHIBIT No. 21.—A. C.

DR. POWELL & CO. CR.

1873.		1873.	
July 10. To balance	10,500 00	Jan'y 2. By cash, 1, 4	3,000 00
		M'ch 11. " ditto, 2, 96	2,000 00
		Ap'l 21. " ditto, 3, 182	2,500 00
		May 8. " Bartles, 1, 51	150 00
		" " ditto, 2, 234	100 00
		" " ditto, 3, 234	125 00
		July 10. " ditto, 4, 420	2,625 00
	10,500 00		10,500 00
Nov. 24. To Man. Nat'l B'k, 70	10,000 00	July 10. By balance	10,500 00
" " balance	500 00		
	10,500 00		10,500 00
		Nov. 24. By balance	500 00
1876.		'74.	
Feb'y 4. To J. Tome, 47	10,000 00	Jan'y 23. " Mf. Nat. B'k, 70	10,000 00

EXHIBIT No. 22.—A. C.

DR. J. TOME. CR.

1876.		1876.	
Feb'y 21. To Henry Scott, 5	500 00	Feb'y 4. By Powell & Co., 42	10,000 00
" " A. Scott, 92	500		

EXHIBIT No. 23.—A. C.

DR. HENRY SCOTT. CR.

1873.		1873.	
July 15. To bal	1,000 00	Jan. 2. By cash, 2	300 00
		Mc'h 10. " ditto, 2, 94	200 00
		Ap'l 3. " ditto, 3, 138	250 00
		July 15. " ditto, 4, 434	250 00
			1,000 00
		15. By balance	1,000 00
		'74.	
		Ap'l 25. " 4 shares new	200 00
		'76.	
		Feb'y 21. " J. Tome, 47	500

EXHIBIT No. 24.—A. C.

AMOS SCOTT.

	1876.		
	Feb'y 21.	By J. Tome, 47	500 00

138 EXHIBIT No. 25.—A. C.

Powell & Co. in ac. with the Watsontown Bank.

DR.

1875.				
Oct.	15.	To Marshall & Co., note & fee		426 49
"	16.	" H. B. Smith, c'k on Powell & Co		200 00
"	18.	" $4412 Nicholas & Co		300 00
"	"	" $4406, do.		1,000 00
"	19.	R. B. Claxton, c'k on Powell & Co		75 00
"	20.	Note & fee of Kaighn, $4400		402 61
"	"	$4466, Follmer		200 00
"	21.	$4467, Carothers		300 00
"	"	Beaver Mills & Lumber Co, c'k		348 00
"	22.	J. M. Follmer, ag'ts, c'k		1,156 26
"	23.	J. M. Follmer, ag'ts, c'k		132 68
"	26.	$4465, Johnson & Fee		152 35
"	"	$4464, Vanderslice		125 00
"	"	$2419, C. D. (J. M. F.)		2,500 00
"	28.	Gold coupons		25 00
"	29.	$4504, Jamison & Fisher		400 00
Nov.	1.	Premium on coupons		3 50
"	2.	$4731, Kemery		100 00
"	5.	$4523, Nichols & Co		400 00
"	"	R. B. Claxton, c'k		20 00
"	10.	$4495, Jamison & Fisher		1,000 00
"	"	" 4575, Goodrich		154 00
Nov.	12.	$4620, McCauley		2,500 00
"	15.	C. Dupont, b'nk	572 75	
"	"	Thomps., Derr & Bro	1,500 00	
				2,072 75
"	"	Beaver Mills & L. Co		20 00
"	"	$4734, Sherrer		235 88
"	18.	$2374, Union Co., Ph'l		500 00
"	20.	$4618, Nichols & Co		500 00
"	"	$4662, Nichols & Co		700 00
"	"	$4663, Jamison & Fisher		400 00
"	23.	$4672, Jamison & Fisher		400 00
"	24.	$2384, Union Co., Phila		500 00
"	27.	$4727, Gibson		2,500 00
Dec.	1	$4733, Bailey		200 00
"	"	4729, Luffert		175 00
"	"	4712, B. Mills & L. Co		600 00
"	"	4732, Vanderslice		225 00
"	6.	C'k L. G. Huling		652 00
"	9.	D'ft Powell & Co. to help pay McCauley note		2,000 00
"	10.	Noble & Co., d'ft & fee		246 58
"	10.	D'ft H. B. Smith		218 20
"	15.	T'x on Earley note		24 90
"	"	$4735, Tincker		250 00
"	"	$5197, Jamison & Fisher		200 00
"	"	$4812, do. do.		300 00
"	"	$4772, do. do.		1,000 00
"	16.	$4880, Beaver Mills & L. Co		750 00
"	20.	$5269, Parker		105 00
				26,696 20
Dec.	18.	To balance		484 89
"	22.	$4773, Jamison & Fisher		1,000 00
"	"	" Jamison & Fisher, c'k		193 66
"	30.	Schmid, collection		30 28
1876.				
Jan'y	5.	$5066, Koeffer		700 00
"	"	$5067, do.		700 00
"	"	$4933, Jamison & Fisher		200 00
"	"	A. Metzger, check		18 00
"	8.	Powell & Co., note $4779		3,000 00
"	"	Beaver M. & L. Co	40 00	
"	"	do. do.	80 00	
"	"	do. do.	528 00	
				648 00
"	17.	$5063, Wagner		260 00
"	26.	$5175, Helsby		200 00
"	"	$5066, Brayman		250 00
"	27.	C'k J. M. Follmer, ag't		1,500 00

"	"	D'ft H. B. Smith		78 84
"	28.	Savege, c'k returned		3 38
				9,267 05
		To balance		4,065 67
		†5069, J. Marshal & Co., due Jan'y 14, '76		350 00
		A. T. Nichols, due Jan'y 21, '76		800 00
				5,215 67

CR.

1875.				
Oct,	16.	By proceeds Brown, Allen & Co note		488 25
"	18.	" W. H. H. Walton, Muncy	4 25	
		" A. T. Nichols & Co	1,282 50	
				1,286 75
"	20.	" H. Huth, c'k		57 75
"	21.	" W. A. Kronse		27 00
"	22.	" S. B. Sprout	93 74	
"	"	" W. A. Cronse	40 00	
"	"	" E. Lyon	46 35	
				110 09
"	25.	" Houston, Smith & Co		40 00
"	"	" Proceeds, G. N. Wagner	254 75	
"	"	" G. W. Sands & Co	130 30	
"	"	" A. Brayman	244 75	
"	"	" Jno. Koeper	687 75	
"	"	" do. do.	687 75	
"	"	" E. M. Valentine	294 25	
"	"	" Jno. Marshall & Co	342 75	
				2,642 30
"	28.	" Beaver M. & L. Co., c'k		17 94
"	"	" Currency per exp		1,000 00
"	29.	" Jamison & Fisher, d'ft		193 60
Nov.	1.	Heckert's, d'ft on Sunbury		34 20
"	"	R. B. Claxton, c'k		6 00
"	"	J. McGowen, on Danville		28 00
"	3.	Jas. Pollock, on Shamokin	10 00	
"	"	J. Squires, Pittston	101 00	
				111 00
"	6.	Proceeds A. T. Nichols & Co. note		292 00
"	8.	W. A. Walton, Muncy	7 50	
"	"	L. G. Huling	25 00	
				32 50
"	9.	Horan & Healy, Scranton	27 00	
"	"	C. A. Bower, Muncy	30 00	
				57 00
"	"	Tho's Johnson, proceeds note	97 50	
"	"	Tho's H. Helsby, " "	196 10	
"	"	John Trout " "	649 00	
"	"	A. T. Nichols & Co	783 25	
				1,725 85
"	10.	Geo. Fleisher, Newport		6 25
"	"	Jamison & Fisher, d'ft		972 47
"	11.	C. F. Follmer		9 00
"	12.	C. McMinn cash'r		154 00
"	13.	McCauley, Lonther & Co., proc. note		2,430 00
"	15.	A. G. Vorse, Danville	8 36	
"	"	McLain & Vandine, Muncy	3 90	
"	"	J. D. Longon, Milton	3 98	
"	"	J. C. Lantz, Summit Hill	10 00	
"	"	B. Langcake, Muncy	10 00	
"	"	P. Leiser	30 00	
				66 24
"	"	Cook & Pardee, d'ft		6 00
"	17.	W. Pollock, cash'r		63 54
"	"	W. Pollock on Shamokin		12 31
"	"	J. L. Hill		13 07
"	18.	H. F. Algert	27 25	
"	"	S. Engle	10 00	
"	"	H. W. Petrican, Muncy	25 00	
				62 25
"	20.	Proceeds of J. W. Fulman	97 50	
"	"	Jamison & Fisher, proceeds	195 00	
"	"	A. T. Nichols & Co., proceeds	487 00	
"	"	J. M. Thompson, "	292 50	
"	"	W'msport Rubber Co.. "	182 00	
"	"	do. do. "	182 50	
"	"	J. H. Parker, "	104 10	
"	"	Brown, Allen & Co	452 00	
				1,992 60
"	22.	Jamison & Fisher	193 67	
"	"	Clement & Dissinger	18 89	
"	"	J. B. Kerstetter, l'b'g	19 13	
				231 69

"	"	Proceeds McCauly, Lonther & Co		4,363 75
"	24.	Lyon note, col., Muncy		125 00
"	27.	H. W. Petrikin, Muncy		35 52
"	30.	W. H. Hertz, Hazleton	5 67	
"	"	O. Foust	30 49	
"	"	H. Gearhart, l'b'g	7 33	
				43 49
Dec.	1.	W. H. Bright, Ashland		60 00
"	4.	Kapp & Son, l'b'g	20 00	
"	"	G. L. I. Painter, Muncy	11 75	
				31 75
"	6.	Nicholas & Co., fee, $4770		2 37
"	"	Proceeds, Burges & Hill	197 00	
"	"	" T. H. Helsby	244 65	
"	"	" Shryok & Clark	577 15	
				1,018 80
"	7.	" P. Herdic, or Noble, Muncy		244 13
"	8.	" R. B. Claxton, jr	10 00	
"	"	" Shreiner & Co., Milton	13 84	
"	"	" Murray, Dongle & Co	20 13	
				43 97
"	9.	" Thos. Swenk, Bloom	45 69	
"	"	C. A. Bowers, Muncy	122 00	
				167 69
"	"	Proceeds Beaver M. & L. Co		1,940 00
"	11.	J. W. Pollock, Shamokin	3 30	
"	"	H. B. Smith, acceptance	218 20	
				221 50
"	13.	R. B. Claxton, c'k		1 90
"	15.	Proceeds H. W. Earley		1,775 10
"	"	Jamison & Fisher	290 50	
"	"	do. do.	963 17	
"	"	C. McMinn, cash'r	10 00	
"	"	Jacob Harris, Danville	16 82	
"	"	Watson, Malone & Son, Phila	88 33	
"	"	Huling & Botton, Phila	105 81	
"	"	Fairbank & Ewing	88 06	
"	"	A. B. Green, Trenton	77 22	
"	"	Wood & Houston, N. Y	6 00	
"	"	Penn. R. R. Co	119 40	
				1,780 21
"	16.	J. T. Cott, North'd	16 67	
"	"	John Percell, "	15 30	
"	"	S. Engle	21 38	
"	"	S. Engle	21 36	
				74 71
"	17.	E. Stevens & Bro., Shamokin	5 70	
"	"	S. J. Riggs, Troy	6 82	
				12 52
"	18.	Lyons, collection		99 25
Dec.	18.	By balance		484 89
				26,696 20
Dec.	21.	R. B. Claxton, jr., c'k	10 00	
"	"	Ricket & King	11 90	
"	"	Shock & Bro., Seling	12 53	
				34 43
"	22.	Fee of Nichols & Co	2 35	
"	"	E. Lyon, Muncy	32 80	
				35 15
"	"	Jamison & Fisher, d'ft		968 33
"	27.	S. G. Markle, Sunbury		547 00
"	29.	A. W. Coburn, do.	19 85	
"	"	S. H. Burrows & Co	10 30	
"	"	W. A. Crist, Phila	7 50	
				37 65
"	31.	Rutter & N		12 37
'76.				
Jan'y	6.	J. Percell, North		25 00
"	8.	W. F. Shay		16 60
"	"	Proceeds Barrows & Co	2,900 00	
"	"	John Kelfer	535 00	
"	"	do. do.	535 00	
				3,970 00
"	21.	J. D. Longan	3 64	
"	"	P. Shay	3 92	
				7 56
"	22.	Fee, Nichols & Co	2 35	
"	"	J. Percell, North'd	24 45	
				26 80
"	25.	Fee Nichols & Co		2 38
"	27.	J. D. Colt, North'd		36 20
"	28.	H. W. Petrikin, Muncy	20 00	
"	"	Wm. Savge, Milton	3 38	
				23 28
		By balance		4,065 67
				9,267 05

139 EXHIBIT No. 26, A. C.

$350.] PHILADELPHIA, *Oct.* 11*th*, 1875.

Three months after date we promise to pay to the order of N. P. Davidson & Co. three hundred and fifty dollars at No. 749 Erie st., without defalcation. Value received.

No. .] JOHN MARSHALL & CO.

Due .

(Endorsed:) N. P. DAVIDSON & CO. JOHN RANSOM. Protested January 14, 1876. Protest, &c., $2.56.

EXHIBIT No. 27, A. C.

$800.] WILLIAMSPORT, PA., *October* 18*th*, 1875.

Three months after date we promise to pay to the order of E. D. Trump, at the banking house of Powell & Co., eight hundred x dollars without defalcation. Value received.

A. T. NICHOLS & CO.

No. . Due .

(Endorsed:) E. D. TRUMP. R. M. FORSMAN.

140 EXHIBIT No. 28, A. C.

BANKING HOUSE OF POWELL & CO.,
Williamsport, Pa., Oct. 16, 1875.

R. B. CLAXTON, Esq., *Cash'r, Watsontown, Pa.:*

DEAR SIR: Your favor of inst. received with enclosure as stated. We credit $

and enter for collection $

Yours respectfully,

POWELL & CO.

We enclose for discount payment guaranteed.

* * * * * * * * =
John Marshal & Co., 3 mos ..... 350 =
* * * * * * * * =
* * * * * * * *
* * * * * * * *
* * * * * * * *
* * * * * * * *

141 EXHIBIT No. 29, A. C.

BANKING HOUSE OF POWELL & CO.,
Williamsport, Pa., Nov. 4, 1875.

R. B. CLAXTON, Esq., *Cash'r, Watsontown, Pa.:*

DEAR SIR: Your favor of inst. received with enclosure as stated.
We credit $

and enter for collection $
Yours respectfully,

POWELL & CO.

We enclose for discount pay't guaranteed.

* * * * * * * * =
* * * * * * * * =
* * * * * * * * =
* * * * * * * * =

*A. T. Nichols & Co ..... 800 =

142 EXHIBIT No. 20, A. C.

DR. *Powell and Co. to Watsontown Bank.* CR.

		Balance due on gen'l ledger Jan'y 28, '76	4,065 67	Feb'y	1	Lyon, coll	147 27
		Int. to date, April 22, '76.	25 00	"	"	Fee of Jamison & Fisher	2 10
Feb'y	11	Trout	665 10	"	3	Proceeds, A. Braymer	145 50
"	"	$5195, Blackwell	33 21	"	"	" Gage & Strayer	91 73
				"	"	" Brown, Allen & Co.	169 00
				"	"	" John Vanderslice	196 00
				"	"	W'msport Rubber Co	239 00
				"	"	P. " "	164 00
				"	"	" P. Herdic	136 90
				"	"	" W. H. Armstrong	1,463 50
							2,604 73
				"	11	" D. A. Engle	30 00
				"	12	" Cook & Pardee	3 50
				"	"	" R. K. Bootger, Erie	10 00
				"	"	" Markle & Co., P	2 00
				"	"	" J. R. Sleifer	29 82
				"	"	" R. B. Claxton, jr	5 00
							50 32
				"	14	" Wm. Savidge	3 38
				"	15	" J. F. Bower	3 51
				"	"	" J. D. Lary & Son	3 77
				"	"	" A. H. Bortger	10 00
				"	"	" J. R. Gerrig	6 29
				"	"	" A. Miller	3 83
				"	"	" J. H. Moyer	7 01
				"	"	" Rodgers & Bro	10 00
							44 41
				"	"	" Fee, Goodrich	2 10
				"	16	" W. O. Bitler	10 50
				"	19	" E. S. Streigber	10 00
				"	23	" J. H. Corry	9 23
				"	"	" Friling & Brown	35 44
							44 67
				"	29	" H. S. Rey	6 00
				"	"	" Cook & Pardee	60 00
							66 00
				M'ch	8	" Latcher & Moore	500 00
				"	9	Protest fee, Vanderslice	2 10
						By balance	1,271 40
			4,788 98				4,788 98
		Bal	1,271 40				

*This note is renewal of $1,000, due & credited to your % on the 16 Oct.

143 EXHIBIT No. 31, A. C.

BANKING HOUSE OF POWELL & CO.,
Williamsport, Pa., Nov. 6, 1875.

R. B. CLAXTON, Esq., *Cash'r, Watsontown, Pa.:*

DEAR SIR: Your favor of inst. received with enclosure as stated. We credit $

and enter for collection $
Yours respectfully,

POWELL & CO.

We enclose for disc't, paym't guaranteed.

McCauley, Lowther & Co..... 2,500 ✗

144 EXHIBIT No. 32, A. C.

$1500.] WILLIAMSPORT, PA., *Dec.* 4, 1875.

Three months after date I promise to pay to the order of Powell & Co. fifteen hundred $\frac{00}{000}$ dollars, at Manufacturers' Nat. Bank, Philadelphia, without defalcation, value received.

No. . W. H. ARMSTRONG.

Due .

(Endorsed:) POWELL & CO. Protested March 7th, 1876. Protest, &c., $2.81.

145 EXHIBIT No. 33, A. C.

$500.] WILLIAMSPORT, PA., *November 17th*, 1875.

Three months after date we promise to pay to the order of E. D. Trump, at the banking house of Powell & Co., five hundred x dollars without defalcation, value received.

No. . A. T. NICHOLS & CO.

Due .

(Endorsed:) E. D. TRUMP, R. M. FORSMAN. Protested Feb'y 19th, 1876. Protest, &c., $2.45.

146 EXHIBIT No. 34, A. C.

BANKING HOUSE OF POWELL & CO.,
Williamsport, Pa., Nov. 19, 1875.

R. B. CLAXTON, Esq., *Cash'r, Watsontown.:*

DEAR SIR: Your favor of 18th inst. received with enclosure as stated. We credit $500

and enter for collection $
Yours respectfully,

POWELL & CO.

We enclose for discount payment guaranteed.

* * * * * * * * =
* * * * * * * * =
* * * * * * * *
* * * * * * * *
* * * * * * * * =
A. T. Nichols & Co..... 500 =
* * * * * * * * =
* * * * * * * * =

147 EXHIBIT No. 35, A. C.

$200.] WILLIAMSPORT, PA., *Nov. 28th*, 1875.

Three months after date I promise to pay to the order of Theo. Hill, at the banking house of Powell & Co., two hundred dollars without defalcation. Value received.

JOHN A. VANDERSLICE.

No.
Due

(Endorsed:) THEO. HILL. Protested March 2, 1876. Protest, &c., $2.35.

148 EXHIBIT No. 36, A. C.

BANKING HOUSE OF POWELL, & CO.,
Williamsport, Pa., Jan. 27, 1876.

Mr. R. B. CLAXTON, Jr., *Cash., Watsontown.:*

DEAR SIR: Your favor of inst. received with enclosure as stated.
We credit $
Send Nichols' c'k up for coll. It is good now.

And enter for collection $
Yours respectfully,

POWELL & CO.

We enclose for discount and credit payment guaranteed.

* * * * * * * *
* * * * * * * *
* * * * * * * *
* * * * * * * *
* * * * * * * *
4057..... 200.00
* * * * * * * *
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149 EXHIBIT No. 37, A. C.

$2,500.] WILLIAMSPORT, PA., *Nov. 8*, 1875.

Three months after date we promise to pay to the order of T. McCauley, at the banking-house of Powell & Co., twenty-five hundred dollars without defalcation, value received.

No.
Due.

McCAULEY, LOWTHER & CO.

(Endorsed:) T. McCauley. Protested Feb'y 11, 1876. Protest fees, &c., $2.35.

150 The examiner appointed by the agreement of counsel to take the testimony of witnesses to be produced, sworn or affirmed, and examined in the foregoing cause, hereby certifies that he held a meeting for the purposes of his appointment, by consent, at his office, No. 46 Pine street, in the city of Williamsport, Pa., on Thursday, the 21st day of September, A. D. 1877, and thereafter by an adjournment from time to time; that the annexed and foregoing testimony was duly taken before him in the manner and at the times and place hereinbefore more particularly expressed.

All of which is respectfully submitted.

ADDISON CANDOR,
Examiner.

WILLIAMSPORT, PA., *May* 21, 1878.

151 (Endorsed:) No. 2. June term, 1877. Circuit court of the U. S. western district of Penna. In equity. The Cecil National Bank of Port Deposit, a citizen of the State of Maryland, and Jacod Tome, a citizen of the State of Maryland, vs. The Watsontown Bank, a citizen of the State of Pennsylvania. Report of examiner. Filed May 27, 1878. Examiner's fee, $75.00.

152 *Opinion and decree.*

Cir. c't, west. dist. Penn'a, at Williamsport. In equity.

THE CECIL NATIONAL BANK OF PORT DEPOSIT and Jacob Tome
vs.
THE WATSONTOWN BANK.

MCKENNAN, Cir. J.:

In this case I am of opinion—

1. That the Watsontown Bank, the respondent, might lawfully refuse to permit a transfer of the stock of Powell & Co. in said bank until their indebtedness actually due and unpaid at the time when the allowance of said transfer was demanded was paid or secured to the satisfaction of the directors of said bank.

2. That this condition might be waived by the said directors, but that there is no evidence that it was waived by them.

3. That authority to make such waiver is not within the scope of the general powers of the cashier of said bank; nor is there sufficient
153 evidence of presumptive authority to that effect from the previous exercise of it in similar cases or otherwise, with the knowledge, consent, or acknowledgment of the directors.

4. That the acts, correspondence, and engagements of the cashier of the bank do not import an agreement to promote a transfer of the legal title to the stock in controversy, which equity would enforce against the bank, nor will they estop the bank from insisting upon the payment or securing of the indebtedness of Powell & Co. previous to such transfer.

5. That the delivery of stock certificate No. 63 to the Cecil National Bank by Powell & Co., with a power of attorney to transfer the stock therein mentioned, invested the said bank with the equitable owner-

ship of said stock, and entitled it to a transfer thereof on the books of defendant, subject, however, to the condition that the indebtedness of Powell & Co. to the latter, which was actually due and unpaid when a demand for the allowance of such transfer was made, should be first paid or satisfactorily secured.

154 6. That such demand was lawfully made by the letter of the cashier of the Cecil National Bank, dated Jan'y 31, 1876, enclosing the stock certificate and power of attorney aforesaid, authorizing R. B. Claxton, cashier of the defendant bank, to transfer the stock to Jacob Tome, with direction to return a new certificate accordingly.

7. That the said papers were properly transmitted to the cashier of the defendant as its authorized representative in that behalf; that the date of the receipt of them by him, to wit, Feb'y 1, 1876, is the date at which the actually matured and unpaid indebtedness of Powell & Co. is to be ascertained, and that the complainants ought then to have been informed of the existence and amount thereof.

8. That at said date the indebtedness of Powell & Co. actually due and unpaid to the defendant amounted to $5,215.67, and upon the payment of that sum the complainants were then and are now entitled to the transfer of the unsold stock of Powell & Co. in the books

155 of the defendant.

It is, therefore, ordered, adjudged, and decreed that [*upon] *when* the payment to the Watsontown Bank by the complainants of the sum of $5,215.67, with interest from Feb'y 1, 1876, the said Watsontown Bank, its officers and directors, permit the attorney in fact of Powell & Co., so constituted by their letter of attorney, dated Feb'y 16, 1874, to transfer to the person named therein on the proper books of said bank one hundred and eighty shares of its capital stock, embraced in certificate No. 63, issued to said Powell & Co., in such manner as by its charter and by-laws is ordained; that it cause to be made and delivered to the transferee of said stock a certificate therefor in due form; that all dividends which have accrued upon said stock since the 1st day of Feb'y, 1876, be deducted from the sum ordered to be paid as aforesaid, and that the said net sum be paid within ninety days from the date of the entry of this decree, in default of which payment this bill shall be dismissed.

156 And it is further decreed that this decree be entered without costs.

(Endorsed:) No. 2. June term, 1877. Cecil Nat. Bank, &c., vs. Watsontown Bank. Opinion, &c. Filed March 26, 1879.

157 *Bond.*

In the circuit court of the United States in and for the western district of Pennsylvania.

THE CECIL NATIONAL BANK, OF PORT DEPOSIT, and Jacob Tome *vs.* THE WATSONTOWN BANK.	No. 2. June T., 1877. In equity.

Know all men by these presents that we, Jacob Tome, of Port Deposit, Maryland, as principal, and J. H. Rowland and Thomas C. Bond, of same place aforesaid, as sureties, are held and firmly bound unto the Wat-

* In pencil.

sontown Bank, defendant in the above case, in the sum of five hundred dollars, lawful money of the United States, to which payment well and truly to be made we do bind ourselves and each of us, and each of our heirs, executors, administrators, and any of them, jointly and
158 severally, by these presents. Sealed with our seals and dated the twenty-sixth day of April, 1879.

Whereas the above-named The Cecil National Bank, of Port Deposit, and Jacob Tome have commenced the prosecution of an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the western district of Pennsylvania:

Now, therefore, the condition of this obligation is such that if the above-named The Cecil National Bank, of Port Deposit, and Jacob Tome shall prosecute their said appeal to effect, and answer all damages & costs if they shall fail to make good their said appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. TOME. [SEAL.]
159 J. H. ROWLAND. [SEAL.]
THOS. C. BOND. [SEAL.]

Signed, sealed, and delivered in the presence of us—
W. W. HOPKINS, R. C. HOPKINS,
As to J. Tome and Thos. C. Bond.

WM. T. WAY, SAML. C. ROWLAND,
As to J. H. Rowland.

Approved—

W. McKENNAN,
Cir. Judge.

(Endorsed:) No. 2. June term, 1877. The Cecil National Bank, of Port Deposit, Maryland, vs. The Watsontown Bank. Bond. Filed April 29, 1879.

160 *Allowance of appeal.*

In the circuit court of the United States for the western district of Pennsylvania, third circuit.

THE CECIL NATIONAL BANK AND JACOB Tome *vs.* THE WATSONTOWN BANK. } No. 2. June term, 1877. In equity.

Now, to wit, April 29, 1879, on motion of Wm. H. Armstrong, attorney for the complainant, the court allow an appeal to the Supreme Court of the United States in the above cause, and fix the security at five hundred dollars.

By the court.

W. McK.

161 (Endorsed:) No. 2. June term, 1877. The Cecil National Bank, of Port Deposit, Maryland, vs. The Watsontown Bank. Allowance of appeal. Filed April 29, 1879.

162 Cir. ct. U. S. No. 2, June T., 1877. In equity.

THE CECIL NATIONAL BANK,
vs.
THE WATSONTOWN BANK.

Specification of errors.

First. The court erred in their decree as follows:

"It is therefore ordered, adjudged and decreed, that upon the payment to the Watsontown Bank by the complainants of the sum of $5,215.67, with interest from Feb'y 1, 1876, the said Watsontown Bank, its officers and directors, permit the att'y in fact of Powell & Co., so constituted by their letter of attorney, dated Feb'y 16, 1874, to transfer to the person named therein, on the proper books of said bank, one hundred and eighty shares of its capital stock embraced in certificate No. 63, issued to said Powell & Co., in such manner as by its charter and by-laws is ordained; that it cause to be made and delivered to the
163 transferee of said stock a certificate therefor in due form; that all dividends which have accrued upon said stock since the first day of Feb'y, 1876, be deducted from the sum ordered to be paid as aforesaid, and that the said net sum be paid within ninety days from the date of the entry of this decree, in default of which payment this bill shall be dismissed.

"And it is further ordered and decreed that this decree be entered without costs."

Second. The court erred in that they did not order & decree, as they should have ordered & decreed, that the said Watsontown Bank, its officers and directors, permit the attorney in fact of Powell & Co., so constituted by their letter of attorney dated Feb'y 16, 1874, to transfer to the person named therein, on the proper books of said bank, one hundred and eighty shares of its capital stock embraced in certificate No. 63, issued to said Powell & Co., in such manner as by its charter and
164 by-laws is ordained, and that it cause to be made and delivered to the transferee of said stock a certificate therefor in due form, without the payment by the said complainants to the said The Watsontown Bank, of the sum of $5,215.67, with interest from Feb'y 1, 1876, or the payment of any other sum whatsoever, and without any restriction or condition whatsoever.

Third. The court erred in that they did not order and decree that all dividends which have accrued upon said stock since the first day of Feb'y, 1876, be paid to the said complainants.

Fourth. The court erred in that they did not order & decree, that the said Watsontown Bank should pay to the complainants such damages as they have sustained by reason of the refusal of the said defendant to permit the transfer on the books of said Watertown Bank of
165 the said one hundred and eighty shares of the capital stock of said bank to the said complainants, and to issue certificates therefor.

Fifth. The court erred in that they did order and decree that the decree be entered without costs, and in that they did not order and decree that the costs be paid by the defendant.

WM. H. ARMSTONG,
Att'y for Appellant.

(Endorsed:) No. 2. June T., 1879. Filed June 10, 1879.

166 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

I, B. S. Bentley, jr., clerk of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, do hereby certify that the foregoing pages contain a full and correct copy of the whole record and proceedings in case No. 2, June term, A. D. 1877, wherein The Cecil National Bank, of Port Deposit, Maryland, and Jacob Tome are plaintiffs, and The Watsontown Bank, Penn'a, is defendant, so full and entire as the same remains of record in said court.

Witness my hand and the seal of said court, at Williamsport, this 10th day of June, A. D. 1879.

[SEAL.] B. S. BENTLEY, JR., *Clerk.*

(Indorsement on cover:) No. 241. The Cecil National Bank, of Port Deposit, Maryland, & Jacob Tome, appellants, vs. The Watsontown Bank. W. Pennsylvania C. C. U. S. Filed 11th September, 1879.

IN

THE SUPREME COURT OF THE UNITED STATES.

No. 241, October T, 1881.

THE CECIL NATIONAL BANK,

vs.

THE WATSONTOWN BANK.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF FOR THE APPELLANT.

W. H. ARMSTRONG,
Attorney for the Plaintiff.

HELLER BROTHERS, PRINTERS.

IN

THE SUPREME COURT OF THE UNITED STATES.

No. 241, October T, 1881.

THE CECIL NATIONAL BANK,

vs.

THE WATSONTOWN BANK.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF FOR THE APPELLANT.

STATEMENT OF THE CASE.

This bill was filed to compel the defendant to issue certificates for two hundred shares of stock, standing in the name of the plaintiff on the books of the bank, and which the defendant refused to issue; claiming that the title in the plaintiff was derived through Powell & Co., who were indebted to the bank, and upon whose stock the bank had a statutory lien for the payment of the debt.

The facts are as follows:

On the 10th of July, 1873, Powell & Co. were the owners of 210 shares of the capital stock of the Watsontown Bank, of the par value of $10,500. On the 24th of November, 1873, Powell & Co. transferred these shares to the Manufacturers National Bank, of Philadelphia, as collateral security. On the 22d of January, 1874, the Manufacturers Bank re-transferred the stock

to Powell & Co., and on the same day issued to him a new certificate for two hundred shares, which Powell & Co., on the 16th day of Feb., 1874, Ex. p. 15 and 35, transferred to Jacob Tome, by endorsement on the certificate, and delivered the same to him as collateral security for loans, the first of which, made on that stock, was received by Powell & Co. on the 24th of February, 1874, and which, after renewal, culminated in the notes p. 30, December 4th, 1875, for $5,000, at 30 days, and December 20th, 1875, for $5,000, at 40 days. Jacob Tome, p. 12, was the President of the Cecil National Bank, and held the stock in trust for the bank. These notes not being paid at maturity, R. C. Hopkins, Cashier, on the 31st January, 1876, Exhibit No. 4, mailed the certificate to R. B. Claxton, Caihier of the Watsontown Bank, who is named as the attorney to transfer, request a new certificate to be returned in the name of J. Tome. On the 1st of Feb., Ex. No. 5, p. 31, Claxton, Cashier, replied, "Your favor of 31st ult. received, with stated enclosure. A new board of Directors was elected yesterday who will organize on Monday, Feb. 7. A president will then be elected and I will forward your stock certificate. Mr. Pardee, our present president, is not here, and I have no signatures on the stock book. I think I can find a purchaser for Mr. Tome's stock, at from one hundred to one hundred and two, and possibly more. If you will let me know exact figures I will endeavor to dispose of it promptly, if he so desires."

The stock book shows, Exhibit 21, p. 35, that on the fourth day of February, 1876, the stock was charged to Powell & Co., and the same day an account was opened with J. Tome and the stock credited to him.

On the fifth of February, Exhibit No. 12, p. 33, Claxton, Cashier, wrote Hopkins, Cashier, "Your favor of 3d inst. received and contents noted. I think I can now dispose of the stock at one hundred and four and one hundred and five; probably the latter figure. It will be impossible to place it all at once, and time may be required to dispose of it all. If I find a purchaser for any part of Mr. Tome's stock I will advise you."

The letter of the 3d inst., which the above letter acknowledges, from Hopkins, Cashier, could not be found, and is not in evidence.

On the 8th of February, 1876, Claxton, Cashier, Exhibit 13 p. 33, again wrote to Hopkins, Cashier, "In reply to your favor of 7th inst., I can only repeat what I said in my last letter. I think the stock can be sold (gradually) @ 105, and if you desire it, will endeavor to sell at that price, free of commission. It will take a little time to place it all, as our money matters here are very close now. It changed hands here at that figure to-day. Awaiting your further instructions, I am," &c.

There is added, as a postscript to this letter, "Mr. Pardee is not here. I am unable to issue a certificate of stock until I obtain his signature as president. He expects to be here in the next ten days."

The letter from Hopkins to Claxton, of the 7th of February, could not be found, and is not in evidence.

On the 9th of February, Exhibit 6, p. 31, J. Tome writes to Claxton, Cashier, "Your favor of the 8th inst. received. Please retain certificates of stock and sell them at $105 and remit proceeds to me, if you cannot get more."

On the 11th of February, Exhibit 14, p. 33, Claxton Cashier, wrote to J. Tome, "Your favor of 9th inst. received and contents noted. Please send me power of attorney to transfer stock. As fast as I dispose of it I will remit and advise you. If you prefer, you can send power of attorney to our attorney, Oscar Foust, Esq., or any member of our board. Mr. Pardee is not here, and I cannot send you stock certificate till he comes. As you intend to sell, it is useless to forward certificate. I have arranged for the disposition of $1,000 of it to-day, and will be as prompt as possible in placing the balance."

On the 14th of February, 1876, Exhibit 7, p. 31, J. Tome wrote to R. B. Claxton, "Enclosed I send you power of attorney to sell and transfer the stock in your bank, and it will not

be necessary to forward me a certificate. As fast as sold, you can remit me for the same."

On the 16th of February Claxton replied to Tome, Exhibit 15, p. 34, "Your favor of the 14th inst. received, with p——a, as stated. I am now negotiating with several parties for the sale of your stock, and will report and remit promptly should I sell any stock."

The power of attorney referred to is Exhibit No. 19, p. 35. The stock book Exhibit 22, p. 35, shows that J. Tome's account is charged, Feb. 21, 1876, with ten shares of stock, $500, to A. Scott and ten shares to Henry Scott, and the same day, Ex. 23, 35, Henry Scott is credited with ten share, and Amos Scott, Ex. 24, p. 36, is credited with ten shares; and on the same day Exhibit 16, p. 31, R. B. Claxton, cashier, wrote J. Tome, sending him an account of the sale of twenty shares of his stock sold for $1050; and after deducting exchange $1.25 enclosed him draft on Philadelphia for $1048.75 the proceeds of the sale, and adds "I have prospects of selling more very shortly."

On the 26th of Feb., Exhibit 8, p. 32, J. Tome wrote to R. B. claxton, cashier, "If you can get $104 for the stock instead of $105 and close up the sale and remit, you can do so. I want to have it closed as soon as you can conveniently."

The firm of Powell & Co. p. 17, marginal p. 64, failed March 12, 1876; and April 13, 1876, made a voluntary assignment for the benefit of their creditors.

The relations between Powell & Co. and the Watsontown Bank were very intimate. Martin Powell, the head of the firm of Powell & Co., p. 24, marginal p. 94, was a director in the Watsontown Bank, and R. B. Claxton, cashier of to Watsontown Bank, was a member of the firm of Powell & Co. p. 26, marginal p. 60; and this fact was known p. 19, marginal p. 73, to the directors of the Watsontown Bank during all the time that he acted as cashier, and while he was a member of the firm.

When Powell & Co. failed they were indebted to the Watson-

town Bank in the sum of $5215.67, p. 25, marginal p. 98. The account is shown in detail in Exhibit 35, p. 36.

On the 14th of April 1876, Exhibit 18, p. 34, Oscar Foust, attorney for the Watsontown Bank, wrote Mr. Tome, "Sometime since, you sent to our bank a certificate of stock originally issued to Powell & Co., and by them transferred to you, for $10,000. This transfer was never approved by our President or board of Directors, and we will not do so or cannot under the act of assembly regulating banks in this commonwealth so long as Powell & Co. are indebted to us either as drawer, maker or endorser for matters due and unpaid. And as this is the existing state of facts, we cannot permit a transfer to be made until we are secured to the satisfaction of our board of Directors for all their liabilities."

Mr. Tome, p. 15, mar. p. 56, swears, "The first notice that I had that the Watsontown Bank made any claim upon this stock was by the letter of Mr. Foust, dated April 14, 1876, which, by reason of my absence from home, I did not receive until the 23d or 24th of April, and to which I replied on the 24th of April."

To this letter, Exhibit 11, p. 32, Mr. Tome writes to Mr. Foust, "In reply, I would say that when I sent the stock to the Cashier, for transfer, he made no objection to it, but assigned as a reason for not sending me a certificate, the absence of the President, and that on his return he would do so. Subsequently, when I directed him to sell the stock, I sent him, at his request, a power of attorney to do so, and under it he sold twenty shares and remitted me the proceeds, adding that as I wanted to sell the stock, it would not be necessary to send me a certificate. I was at the bank on the 13th inst., and saw some of the Directors and Cashier, none of whom objected to the transfer of the stock to me; but on the contrary, they made me an offer for the balance of the stock. The price was not sufficient; and since, I have concluded to keep it, and want a certificate for it. Assuredly, after the Cashier having offered me a certificate, and then acting as my agent in the sale

of a part of it, without any objection from Directors or officers, it cannot now be withheld and the stock applied to any other purpose than that for which I held it. It is too late to object now. Had it been done at first, I might otherwise have secured myself. Entertaining these views, unless the certificate for the balance of the stock is made to me I will have to take such steps as may be necessary to obtain it."

On the 8th of May, Exhibit 9, p. 32, Mr. Tome wrote to R. B. Claxton, "Having concluded to keep the balance of my stock of your bank unsold, you will please forward me certificate for the same by return mail."

To this, on the 15th of May, 1879, Mr. Claxton replied, Exhibit 17, p. 34, that he had laid his letter of the 8th inst. before the board of Director, at their meeting to-day, and that he was "directed to say to you that they forbid my transferring the stock, because under the banking laws of this commonwealth stockholders are not permitted to make transfer of stock so long as they are indebted to the bank either as drawers, makers or endorsers or guarantors for debts due and unpaid; and as this was the situation of Powell & Co. at the time you forwarded me the certificate, it comes within the prohibition, and they cannot approve or allow the same until the said debts are paid or secured with satisfaction to the board of Directors."

Mr. Tome, on the 19th of May, Exhibit 10, p. 32, wrote to R. B. Claxton, Cashier, "Your letter of the 15th inst. is received, declining to transfer the stock, which you promised to do. In reply, have only to say, I shall proceed to make you do it."

This closed the correspondence, and on the 22d of September, 1876, this bill in equity was filed, setting forth the facts and, p. 5, mar. p. 17, that by reason of the refusal of the bank to transfer the same, or to deliver certificates therefor, the plaintiff was wholly unable to make sale of the stock, or to make it available for the payment of the notes of Powell & Co., which, by reason of it, remained due and payable and unpaid, and praying that the defendant may be compelled to permit the

transfer and to issue certificate to the plaintiff for the stock, and to pay such damages as the plaintiff has incurred by reason of their refusal to transfer the stock and issue certificates therefor, and that the plaintiff may have such further relief as the nature of the case shall require.

To this the defendant answered, setting up, p. 8, mar. p. 27, the act of assembly regulating banks, approved April 10, 1850, sec 10, viz., "The stock of the bank shall be assignable and transferable on the books of the corporation only, and in the presence of the President or Cashier, in such manner as the by-laws shall ordain: but no stockholder indebted to the bank for a debt actually due and unpaid shall be authorized to make a transfer or receive a dividend until such debt is discharged or security to the satisfaction of the directors given for the same."

The defendant, mar. p. 29, denied that Claxton, Cashier, had any authority to do that which he did do in reference to the stock, and sets out the indebtedness of Powell & Co., and prays that the bill may be dismissed, with costs.

The Court below ruled the case, p. 43, in a series of propositions, culminating in the decree, p. 44, marg. p. 155, awarding the stock to the plaintiff upon the payment of $5,215.67, with interest from February 1, 1876. To this decree the defendant, p. 46, filed specifications of error:

First. That the Court erred in adjudging the stock to the plaintiff on the payment of the sum of $5,215.67, with interest.

Second. That they did not order and decree that the defendant should permit the transfer and issue a certificate for the stock to the plaintiff without the payment of the sum of money above referred to and without any restriction or condition whatsoever.

Third. That they did not order and decree that all dividends accrued since February 1, 1876, should be paid to the plaintiff.

Fourth. That they did not decree that the defendant should pay to the plaintiff the damages accrued by reason of their re-

fusal to permit the transfer and to issue certificates for the stock.

Fifth. That they ordered the decree to be entered without costs, and in that they did not decree that the costs should be paid by the defendant.

ARGUMENT.

The opinion of the Court below is confined to the statement of certain conclusions which are announced without any discussion of either the facts or the law, and without the citation of any authorities. The Court held that the stock in controversy was legally transferred by Powell & Co. to the plaintiff, and that the title was in all respects sufficiently vested in the plaintiff, but that it was subject to the alleged statutory lien of the Watsontown Bank for the indebtedness of Powell & Co. The court also held that this right of lien might be waived by the directors of the bank, but that there was no evidence that it was waived by them, and that the authority to make such a waiver was not within the scope of the general powers of the cashier, and that there is not sufficient evidence of presumptive authority to that effect from the previous exercise of it in similar cases or otherwise, with the knowledge, consent or acknowledgment of the directors.

Also, that the acts, correspondence and engagements of the Cashier of the bank do not import an agreement to promote a transfer of the legal title to the stock in controversy which equity would enforce against the bank; nor will they estop the bank from insisting upon the payment or securing of the indebtedness of Powell & Co. previous to such transfer.

These propositions, being No. 2, 3 and 4 of the opinion, p. 43, embody the controversy in this case.

It is to be observed that the section of the act upon which the defendants rely, p. 8, mar. p. 27, requires the stock to be transferred on the books of the corporation, in the presence of the President or Cashier. It is clearly in evidence that the stock was transferred upon the books by the Cashier himself—of course "in his presence." The prohibition of the act is, that no stockholder shall *make a transfer* on the books until the debt is discharged or secured to the satisfaction of the directors.

Assuming that Powell & Co. were, on the 28th day of January, 1876, indebted to the bank $5,215.67, as stated by Rombach, p. 25, mar. p. 98, his obligation is confessedly that of a guarantor only; and the plaintiff denies that such obligation is a "debt actually due and unpaid," within the meaning of the act. The obligation of a guarantor is contingent only, and does not become a debt until the liability is either admitted or judicially ascertained. The obligation of a maker or endorser is primary, and not contingent. The duty of presentment and protest for non payment is not a contingency affecting the contract, but a step in the process of collection, and has reference to the remedy only. Before the bank could hold the guarantors they must exhaust their remedies against the parties to the note.

But apart from this consideration, the transfer had in fact been made and was an accomplished fact, and the presumption is violent that Powell's debt was sufficiently secured to the satisfaction of the directors by the notes and endorsements alone and by Powell & Co.'s personal guarantee. If these were not satisfactory, the transfer would not have been permitted. The act does not require the debt to be paid, and its provision is fully satisfied whether additional security be required, or whether the debt is considered as sufficiently secured by the real or supposed responsibility of the parties to the paper discounted. What is sufficient security is a mere question of ordinary business and discretion, within the ordinary and established methods of business adopted by the bank.

the stock had been transferred to Tome on the books of the bank on the 4th of February, 1876, in the usual manner and according to the established practice of the bank, as stated by Claxton. Rambach, who was Teller while Claxton was Cashier, and who succeeded him and is the present Cashier, swears, p. 27, "That Claxton did all the transferring of stock."

It is clear that the bank had full notice that the stock had been transferred as collateral to Tome long before the debt from Powell & Co., as guarantors, to the bank was created, if indeed their obligation can be construed to be a debt from them actually due and unpaid within the meaning of the act, even after the maturity of the obligations they had guaranteed. Powell & Co., (see pages 39 to 42,) is neither the maker nor endorser of any of the paper which constitutes the alleged indebtedness. Their obligations are simply letters from Powell & Co. to Claxton, Cashier, in which they say, "We enclose for discount; payment guaranteed." The only one of these letters, p. 39, which affects this case is dated October 16, 1875. Powell, p. 16, testifies that at the election in January, 1874, he notified the directors that the stock was out as collateral; and that at the election in January, 1875, he informed them that the stock was still out as collateral. Powell himself was also a director. After this notice to the bank that the stock was pledged as collateral, the bank had no right to create indebtedness upon the strength of the stock to the prejudice of the holder. Having notice of such transfer, the bank is estopped in equity from holding against Powell's transferee for any debts subsequently created. The stock was transferred by Powell & Co. on the 16th of February, 1874, and at the January election in 1875 he put the bank upon notice that he was no longer the owner of the stock; and on the 31st of January, 1876, Hopkins, Cashier, sent the certificate to Claxton, Cashier, demanding a new certificate in the name of J. Tome.

In Insurance Co. vs. Smith, 1 Jones, 120, "A stockholder empowered the secretary in writing to transfer certain stock; in

pursuance of which the secretary entered on the books that the stock was transferred. See paper filed." *Held* that this was a substantial compliance with the by-laws, which required the transfer to be made on the books of the company, and to be attested by the secretary. It is also held, that "Where a by-law required the consent of the directors to a transfer of stock by a stockholder indebted to the company, but in the practice of the company such cases were never brought before the board, a transfer by such a stockholder made without that consent, but according to the usage of the company, is good against the company.

The question is ably discussed on p. 125, to which the attention of the court is called.

In Klopp vs. Bank, 46 Penn, 88, the court construes the clause, "debt actually due and unpaid," and holds, that the debt is not due until the bank has the right to demand and receive the money and to protest for non-payment; and that the note is *actually unpaid*, if on demand the drawer refuses to pay. In this case the note matured on the 24th of May; and the assignees demanded transfer on the 25th. It was held "That the lien of the bank attached on the 24th before notice of assignment; and on the 25th it had a right to refuse to make a transfer, and hold the stock upon the debt."

As applied to the case in hand, the demand of transfer was acknowledged by Claxton, cashier, on Feb. 1st, 1876, Ex. No. 5, p. 31. At that date it is clear that not one dollar of the debt from Powell to the Bank was "actually due and unpaid," unless a mere guarantee be within the act. Statutory liens are to be strictly construed, and will not be extended by implication.

The act of 1814, P. L. 167, sec. 7, art. 11, provided "That no stockholder indebted to the institution shall be authorized to make a transfer," etc. This was held to embrace a debt contracted, although not due nor payable. The inconvenience was so great that under the act of March 25, 1824, re-enacted in 1850, the law was changed and the lien limited to a "debt actu-

ally due and unpaid." The two acts were considered in Grant vs. Bank, 15 S. & R., 144, in which the court say that the change was an alteration in consequence of a change of policy; and the lien has ever since been limited in construction to the precise terms of the act: and the lien does not attach until the debt becomes actually due and payable. Until that time the right of transfer is absolute.

In Sewall vs. Lancaster Bank, 17 S. & R., 286, the court, in construing the section under consideration, say, "The general understanding, as well as the obvious meaning of this clause is, that if a transfer is permitted to be made on the books of the bank, the person to whom the stock is transferred would hold it discharged from any lien for debts due the bank. The security is put in the hands of the bank. No transfer can be made unless their officers produce the books and permit the transfer. If they do permit it, the lien of the bank is gone. The transfer on the books is in general conclusive of the right—at least against the bank."

In Morse on Banks, 507, it is said, citing Sewall vs. Bank, "If the bank suffers the transfer to be made upon its books without the express stipulation that the shares shall be held by the assignee, subject to the lien for the then subsisting indebtedness of the assignor, it will amount to a waiver of the lien."

In McNeil vs. The Bank, 46 N. Y., 331, it is said "It has been settled by repeated adjudications, that as between the parties the delivery of the certificate with assignment and power endorsed, passes the entire title, legal and equitable, in the shares, notwithstanding that by the terms of charter or by-laws of the corporation the stock is declared to be transferable only on its books; that such provisions are intended solely for the protection of the corporation, *and can be waived or asserted at its pleasure;* and that no effect is given to them, except for the protection of the corporation."

To the same effect is Leitch vs. Wells, 48 N. Y., 586.

If the obligations of Powell & Co. were not a debt actually

due and unpaid the bank had no lien upon the stock, and this fact alone would be conclusive of the case.

So also, the transfer having been actually made upon the books, by the cashier, in due course of business, it is conclusive upon the bank, whether there was a debt actually due and unpaid or not.

But whilst the fact of the transfer is not denied, it is contended that the cashier was not authorized to make it, and that the certificate not having issued, the lien is unaffected by the transfer, and that nothing would conclude the bank except a formal resolution passed by the board, when convened as such, authorizing the certificate to issue.

It is respectfully submitted that such position is wholly untenable, and is at variance with the universal practice of all banks everywhere. The transfer of stock and issuing of certificates are in the ordinary course of business, and unless in exceptional cases, are under the direction and in the discretion of the cashier. The transfer upon the books is, as between the bank and the holder, the only evidence of ownership. It is the title upon which the stock is voted, and the only title which the bank recognizes. The certificate is no more than a certification of what the books show, useless as respects the bank, and only valuable to the owner as being a portable authentication of his ownership when dealing with strangers. As between him and the bank, it is of no consequence; and everywhere there are thousands of shares for which no certificates have issued, the title for which, as shown upon the books, is not questioned. The transfer of stock is an executive duty peculiarly appropriate and universally confided to the executive officer of the bank.

In Bissell vs. Bank, 69 Penn., 416, it is said, "The cashier of an incorporated bank is the general executive officer to manage its concerns in all things not peculiarly committed to the directors. He is the agent of the corporation and not of the directors."

In Kelsey vs. Bank, Id. 426, it is held, "It was not necessary in order to bind the bank by acquiescence, that notice of the

cashier's act should be given to the directors when acting officially; if personally cognizant of it, they should have assembled the board and disavowed the cashier's act, if unwilling to be bound by it."

In Morgan vs. R. R. Co., 6 Otto, 716, it is *held*, "A party is not permitted to deny a state of things which his conduct or misrepresentations led another to believe existed, and to act in accordance with that belief.

Powell, p. 24, mar. 94, was himself a director in the bank and testifies without contradiction that, at the election in 1874, and again at the Jan. election in 1875, he informed some of the directors that the stock was out as collateral. After such notice they could not in equity discount paper for Powell & Co., relying upon the stock as security, and no officer or director sworn in the case asserts that they did. The books show the transfer to Tome on the 4th of Feb., 1876; and the directors will not be permitted in their official capacity to deny notice or knowledge of that which their own books show, and which it was their duty to know. If the title in Tome was not good, then the one thousand shares transferred on the 21st of Feb., 1876, to Henry Scott and A. Scott, was unauthorized, and their stock remains subject to the lien. But if there was title in Tome to the twenty shares transferred from him, there is equal and the same title to that which remains. There is no equity in Scott which rises higher than the equity in Tome.

It is too clear to need citation that the company is to be affected by the acts of its agent, within the scope of his authority, as acts done by itself.

In Presbyterian Congregation vs. Bank, 5 Penn., 348, the clause of the act of 1824, similar to that of 1850, is discussed. It is said "That such liens on any kind of property are abhorrent to our law, because they check the spirit of enterprise and trade, and entrap the unwary; yet this is a secret lien to all intents and purposes. An opportunity of knowing the state of the accounts of the individuals is interdicted. The bank officers

are constituted judge, jury and sheriff for the purpose of enforcing this lien :" and it is held that it must not be enforced beyond the prescribed limits.

In Harrisburg Bank vs. Tyler, 3 W. & S., 376, the declarations of a cashier were admitted to show that certain knowledge was in his possession ; and it is said that it is the duty of that officer to disclose to the directors his knowledge, &c., and the presumption is that he did so. " He is by necessary practices the agent of the bank to manage its concerns in all things not peculiarly committed to the directors by the charter. He has general authority to superintend the collection of notes under protest ; to make agreement of compromise when necessary ; and in short, to do anything which any other agent may do within the scope of his business. The extent of the cashier's authority is to be measured by the duties assigned to him. It was proved that he was allowed to discount notes, a function which involved a *greater extent of power than is necessary to effect a transfer of either dividend or stock.*" " His knowledge at the time of the transaction was therefore emphatically the knowledge of the board whose functions he was authorized to perform."

Flickner vs. Bank of U. S., 8 Wheat, 338 : " The acts of a cashier of a bank, done in the ordinary course of business of a bank, are *prima facie* evidence that they fell within the scope of his duties. The cashier of a bank is its executive officer by whom its debts are received and paid, and its securities taken and transferred."

1 Peters, 70, Minor vs. Bank : " The ordinary usage and practice of a bank in the absence of counter proof must be supposed to result from the regulations prescribed by the board of directors to whom the charter and by-laws submit the general management of the bank, and the control and direction of its officers. It would be not only inconvenient but perilous for the customers or any other persons dealing with the bank to transact their business with the officers upon any other presumption. The officers of the bank are held out to the public as having authority to act according to general usage, practice and course

of their business; and their acts within the scope of such usage, practice and course of business would in general bind the bank in favor of third persons possessing no other knowledge."

"If the president of the company be in the habit of acting as its business agent, with its knowledge and without objection, actual authority may be inferred from such acts, and the company will be bound by them." 54 Penn., 380, Dougherty vs. Hunter.

"The acts of a cashier within the scope of the usage, practice and course of business will bind the corporation in favor of third persons transacting business with them, and who did not know at the time that the officer was acting beyond and above the scope of his authority." 15 Pa. St., 172, Lloyd vs. Bank.

In People's Bank vs. National Bank, 101 U. S. R., 183, the court, discussing the power of bank officers, say: "It is to be presumed the vice-president had rightfully the power he assumed to exercise, and the defendant is estopped to deny it. Where one of two innocent parties must suffer by the wrongful act of a third, he who gave the power to do the wrong must bear the burden of the consequences. The doctrine of *ultra vires* has no application in cases like this."

In Johnson vs Laflin, U. S. R., 802, it is held: "That the title to shares of stock of a natiional bank passes when the owner delivers his stock certificate to the purchaser with authority to him, or any one whom he may name, to transfer them upon the books of the bank;" and on p. 804, discussing the relation of the purchaser to the bank as respects the stock, it is said: "Purchasers and creditors in the absence of other knowledge are only bound to look to the books of the register of the bank."

Within both the letter and the spirit of all the decisions, the moment the transfer of the stock had been made upon the books of the bank, the title in Tome became absolutely vested, and it was not necessary for him to look further. The giving or withholding of his certificate added nothing to his rights as owner,

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and if issued, would simply have put him in possession of the legal evidence of his title.

But, assuming for the argument, that the act of the cashier in transferring the stock was unauthorized, it would still be binding upon the bank, as against third persons, without notice, and if the bank thereby suffered, their remedy would be against the cashier, and his bondsman.

In Bank vs. Barrington, 2 Penn. R., 27: "A cashier of a bank, although appointed by the directors, is the agent of the company, and if he permits a transfer of stock to be made to the bank to an amount prohibited by a fundamental article of the charter, he is answerable to the stockholders for any loss which may accrue in consequence of such transfer, notwithstanding a resolution of the board of directors authorizing it."

"A cashier of a bank has *prima facie* authority to endorse on behalf of the bank, the negotiable securities held by it. If there be any restriction of his authority, it must be proved by the bank." 3 Mason, 505, Wild vs. Bank.

Of course the proof must be of a restriction prior to the act in controversy; and no such restriction is even suggested. It is nowhere denied that the transfer was regular according to the established and only practice of the bank.

The whole subject is fully discussed in Morse on Banks, p. 64:

"The cashier has full charge, control and power of disposition over all personal property of the bank, whether specie, notes, bills, bonds, or of whatsoever other description it may be."

Id. 165: "It may happen that a cashier may willfully make a tuansfer or endorsement in direct disobedience to special directorial instructions. But in any of these cases of improper transfers by the cashier, he simply renders himself responsible to the bank for the consequences of his misconduct. The outside party, dealing with him in good faith, and without notice of the irregularity, holds the bank as if the transaction had been unobjectionable throughout. For it is an inherent power of the cashier, which he exercises simply by virtue of his office, to

make the transfer; and no person can be required in a case where no circumstances of suspicion put him upon an inquiry to go behind this authority. If the agent exceeds it, the matter lies wholly between himself and his principal."

Id. 177: "The cashier properly makes or superintends the *transfer of shares*. Any person showing *prima facie* a legal right to demand a transfer to himself, may demand it from the cashier or from any other principal officer left in general charge and superintendance of the business of the banking house. A *prima facie title* is enough."

"The cashier is not only justified in giving it, but it is even his duty to do so, and the bank cannot subsequently be held liable on the ground of any original irregularity, which should have altogether prevented the making of the sale."

Id. 78: "Cashier is agent of the bank, and law of agency applies to him. Official acts of the agent within the scope of his powers and duties are in law the acts of the corporation, whether these be rightful or wrongful. Innocent third parties have the right to regard them in this light, and the law will thus construe them. Knowledge obtained by the agent in his official capacity and within the scope of his agency will affect the corporation; and his declarations in like manner bind the corportion."

Id. 80: "Knowledge of the officer is the knowledge of the bank, and affects the bank. Any person who deals innocently with the officers of the corporation within the scope of their functions, will be fully protected, and will have their contract enforced by law."

Id. 81: "The simple question is whether or not the third party dealing with the agent had a *right to suppose* that the agent was dealing within the scope of his authority. Secret limitation of his functions will not be allowed to invalidate his act."

The evidence of Powell that he had notified some of the directors at the election in Jan., 1875, that he had transferred his stock as collateral was not in the least contradicted.

Id. 125: It is said, "If the director acquire knowledge in his official capacity or in the course of or in relation to any special matter or function of which he had charge as an agent of the bank, then he knows it as a director, and the law holds that the bank also knows it."

In 11 Wallace, 356, "The Distilled Spirits," it is held that "the principal is bound and affected by such knowledge, or notice as his agent obtains in negotiating the particular transactions, is everywhere conceded;" and further, that "notice to the agent is notice to the principal, and extends also to knowledge acquired by him in a prior transaction, and present to his mind at the time he is acting as such agent."

In Bank vs. Cushman, 121 Mass., 490, the same doctrine is applied to a bank, and it is ruled, "If a director of a bank who acts for the bank, in discounting a note, has knowledge that the note was procured by fraud, the bank is affected with his knowledge."

In this discussion I have not overlooked Railroad vs. Clark, 29 Pa. St., 146, cited in argument and mainly relied upon by the defendant.

It was an action to recover from the original subscriber an installment due upon his original subscription. Defence was taken for eighty shares transferred by the subscriber, to a third party, before the subscriber had paid for his shares subscribed. The charter forbade the transfer by any holder of stock "*indebted* to said company *unless the board of directors shall consent thereto.*" The court held that "a transfer by a person *indebted* without the action of the board, is a nullity, and such consent must be evidenced by a recorded resolution of the board, and cannot be proved by parol."

On page 152 they distinguish the case from "ordinary business transactions between a corporation and strangers," and cite with approval Insurance Co. vs. Smith, 11 Pa. St., 120, where it is ruled that "where a by-law required the assent of the directors *to a transfer* of stock by a stockholder indebted to the company,

but in the practice of the company, such cases were never brought before the board, a transfer made without that consent, but according to the usage of the company, is good against the company."

But the distinction between the case of Railroad vs. Clark and this case is plain. That charter forbade a transfer from any stockholder "indebted." The bank act requires that the debt shall be "actually due and unpaid."

That charter required the *consent of the board*, affirmatively, to the transfer. The bank act requires only that the transfer shall be on the books of the bank "in the presence of the president or cashier in such manner as the by-laws shall ordain." Their *consent* to the *tranfer* is not *required*. They have only a negative power, limited to a prohibition of transfer if they should judge the debt not to be secured to their satisfaction. In the one case the stockholder must obtain consent to transfer. In the other the directors must exercise their right of prohibition in due time. Their judgment as to the security of any debt is only an ordinary exercise of the most common function with which directors are invested. To require a special action of the board and recorded resolution to express their satisfaction with the security of their discounts would be not only unreasonable and the highest degree onorous, but contrary to the established and universal practice of banks, and would so embarrass the transfer of shares as ruinously to impair their value. Such doctrine has never been extended to the ordinary transfers of shares, in due course of businesss.

The doctrine deducible from all the cases as applied to the facts of the case in hand, is that the cashier having on the 4th of February transferred the stock in the usual and only manner known to the practice of the bank, it is affected with notice of that transfer on the day it was made, and having allowed it to stand under the circumstances detailed, until the 14th of April following, without notice of dissent, is estopped from denying their knowledge of, or repudiating the fact, and is bound by the

transfer; even assuming for the argument that it was otherwise either irregular or insufficient.

But it is neither. If the obligations of mere guarantee do not constitute a debt actually due and unpaid within the meaning of the act, the bank had no lien. If they had a lien, and suffered the shares to be transferred in due course of business upon the books, the lien is waived. The cashier having made the transfer on the 4th of February, 1876, the bank is affected with notice of the fact; and having suffered it to remain without objection until the 14th of April, is estopped from denying the validity of the transfer, or asserting a lien to affect it. For all these reasons, and either is sufficient, the decree of the court below should be reversed, and the defendant ordered to issue their certificate to the plaintiff.

W. H. ARMSTRONG,
Attorney for the Plaintiff.

OFFICE SUPREME COURT U.S.
FILED
MAR 13 1882
JAMES H. McKEE

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

THE CECIL NATIONAL BANK
AND
JACOB TOME
vs.
THE WATSONTOWN BANK.

No. 241.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF FOR THE APPELLANT

By JOHN A. J. CRESWELL, of Counsel for Appellant.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1882.

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Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

Brief for the Appellant by JOHN A. J. CRESWELL, *of Counsel for Appellant.*

NATURE OF THE CASE.

This appeal is from the final decree of McKennan, circuit judge, filed in the court below on March 26, 1879, in the words and figures following, to wit, (see 44 p. printed record:)

"It is therefore ordered, adjudged, and decreed that upon the payment to the Watsontown Bank by the complainants of the sum of $5,215.67, with interest from Feb'y 1, 1876, the said Watsontown Bank, its officers and directors, permit the attorney in fact of Powell & Co., so constituted by their letter of attorney, dated Feb'y 16, 1874, to transfer to the

person named therein on the proper books of said bank one hundred and eighty shares of its capital stock, embraced in certificate No. 63, issued to said Powell & Co. in such manner as by its charter and by-laws is ordained; that it cause to be made and delivered to the transferee of said stock a certificate therefor in due form; that all dividends which have accrued upon said stock since the 1st day of Feb'y, 1876, be deducted from the sum ordered to be paid as aforesaid, and that the said net sum be paid within ninety days from the date of the entry of this decree, in default of which payment this bill shall be dismissed.

"And it is further decreed that this decree be entered without costs."

ASSIGNMENT OF ERRORS.

To this decree the appellants assign the following errors:

1st. That the complainants were adjudged to pay $5,215.67, with interest from Feb'y 1, 1876, to the Watsontown Bank before the Watsontown Bank could be required to transfer on the proper books of said bank, according to the letter of attorney of the complainant bank, 180 shares of the capital stock of said Watsontown Bank, embraced in certificate No. 63, issued to said Powell & Co., and before the Watsontown Bank could be required to make and deliver to the transferee of said stock a certificate therefor in due form.

2d. That the court did not direct, as it should have directed, that the transfer of 180 shares of the capital stock of said Watsontown Bank, embraced in certificate No. 63, issued to said Powell & Co., had already been made in due form of law to said Tome, and that the certificate for said shares should be forthwith issued to said Tome, free from any lien of said Watsontown Bank and free from any charge or payment whatsoever.

3d. That the court did not direct, as it should have directed, that all dividends which have accrued upon said stock since the 1st Feb'y, 1876, be paid to complainant bank.

4th. That the court did not direct, as it should have directed, that the said Watsontown Bank should pay to the complainant bank such damages as it sustained by reason of the refusal of the said defendant to issue a certificate for 180 shares of the capital stock of the said Watsontown Bank to the said Tome, the transfer thereof having been duly made on the proper books of said Watsontown Bank on or about the 4th Feb'y, 1876.

5th. That the court decreed that the decree be entered without costs, and that the court did not direct, as it should have directed, that the costs be paid by the defendant.

The proceedings in this case were commenced by bill in equity, filed Sept. 22, 1876, by the Cecil National Bank, of Port Deposit, a citizen of the State of Maryland, and Jacob Tome, also a citizen of Maryland, against the Watsontown Bank, organized under an act of the general assembly of the State of Pennsylvania, entitled "An act to incorporate the Watsontown Bank," approved 27 March, 1872, and having its banking-house and place of business at Watsontown, in the county of Northumberland, in said State—a citizen of Pennsylvania—the object of the bill being to compel the Watsontown Bank to transfer 200 shares of its stock to the complainant bank, or to such other person or persons as the complainant bank may name, and to pay such damages as the complainant bank has sustained or may sustain by the refusal of the Watsontown Bank to permit the transfer of said shares, and to issue certificates therefor. The bill contains the usual prayer for such further relief in the premises as the nature of the case shall require and as the court shall deem meet.

DEFENCE.

The answer sets up that the Watsontown Bank, being a banking corporation, created by a special act of the general

assembly of the State of Pennsylvania, is subject in her corporate capacity to the provisions of an act of assembly of the same State, entitled "An act regulating banks," in which it is provided as follows:

Section 10, article 10: "The stock of the bank shall be assignable and transferable on the books of the corporation only, and in the presence of the president or cashier, in such manner as the by-laws shall ordain; but no stockholder indebted to the bank for a debt actually due and unpaid shall be authorized to make a transfer or receive a dividend until such debt is discharged or security to the satisfaction of the directors given for the same."

The answer further states that the title of the plaintiff to the shares of stock aforesaid was derived through Powell & Co., who were indebted to the Watsontown Bank, and that said Watsontown Bank had a statutory lien under the above-recited law upon said stock, and that R. B. Claxton, Jr., the cashier of the said Watsontown Bank, had no authority to sell or transfer said stock, or any part thereof, to the said Tome, nor to any other person, and that no such sale or transfer was ever made so as to bind the Watsontown Bank, because not made with the knowledge or assent of the said bank.

A replication having been filed in due form, the parties proceeded to take testimony.

STATEMENT OF FACTS.

On the 10th of July, 1873, Powell & Co. were the owners of 210 shares of the capital stock of the Watsontown Bank, of the par value of $10,500. On the 24th of November, 1873, Powell & Co. transferred these shares to the Manufacturers' National Bank, of Philadelphia, as collateral security. On the 22d of January, 1874, the Manufacturers' Bank re-trans-

ferred the stock to Powell & Co., and on the same day the Watsontown Bank, by said Claxton, its cashier, issued to said Powell & Co. a new certificate for two hundred shares, which Powell & Co., on the 16th day of Feb., 1874,(Printed Record, pp. 16, 29, and 30,) transferred to Jacob Tome, by endorsement on the certificate, and delivered the same to him as collateral security for loans, the first of which, made on that stock, was received by Powell & Co. on the 24th of February, 1874, and which, after renewal, culminated in the notes (p. 30,) December 4, 1875, for $5,000, at 30 days and Dec. 20, 1875, for $5,000 for 40 days. Jacob Tome (p. 12) was the president of the Cecil National Bank, and held the stock in trust for the bank. These notes not being paid at maturity, R. C. Hopkns, cashier, on the 31st January, 1876, (Exhibit No. 4,) mailed the certificate to R. B. Claxton, cashier of the Watsontown Bank, who is named as the attorney to transfer, requesting a new certificate to be returned in the name of J. Tome. On the 1st of Feb., (Ex. No. 5, p. 31,) Claxton, cashier, replied: "Your favor of the 31st ult. received, with stated enclosure. A new board of directors was elected yesterday, who will organize on Monday, Feb. 7. A president will then be elected, and I will forward your stock certificate. Mr. Pardee, our present president, is not here, and I have no signatures on the stock book. I think I can find a purchaser for Mr. Tome's stock, at from one hundred to one hundred and two, and possibly more. If you will let me know exact figures I will endeavor to dispose of it promptly, if he so desires."

The stock book shows (Exhibit 21, p. 35) that on the fourth day of February, 1876, the stock was charged to Powell & Co., and the same day an account was opened with J. Tome and the stock credited to him.

On the fifth of February (Exhibit No. 12, p. 33) Claxton, cashier, wrote Hopkins, cashier: "Your favor of 3d inst.

received and contents noted. I think I can now dispose of the stock at one hundred and four and one hundred and five; probably the latter figure. It will be impossible to place it all at once, and time may be required to dispose of it all. If I find a purchaser for any part of Mr. Tome's stock I will advise you."

The letter of the 3d inst., which the above letter acknowledges, from Hopkins, cashier, could not be found, and is not in evidence.

On the 8th of February, 1876, Claxton, cashier, (Exhibit 13, p. 33,) again wrote to Hopkins, cashier: "In reply to your favor of 7th inst., I can only repeat what I said in my last letter. I think the stock can be sold (gradually) @ 105, and if you desire it will endeavor to sell at that price, free of commission. It will take a little time to place it all, as our money matters here are very close now. It changed hands here at that figure to-day. Awaiting your further instructions, I am," &c.

There is added, as a postscript to this letter, "Mr. Pardee is not here. I am unable to issue a certificate of stock until I obtain his signature as president. He expects to be here in the next ten days."

The letter from Hopkins to Claxton of the 7th of February could not be found and is not in evidence.

On the 9th of February (Exhibit 6, p. 31) J. Tome writes to Claxton, cashier: "Your favor of the 8th inst. received. Please retain certificates of stock and sell them at $105 and remit proceeds to me, if you cannot get more."

On the 11th of February (Exhibit 14, p. 33) Claxton, cashier, wrote to J. Tome: "Your favor of 9th inst. received and contents noted. Please send me power of attorney to transfer stock. As fast as I dispose of it I will remit and advise you. If you prefer you can send power of attorney to our attorney, Oscar Foust, Esq., or any member of our

board. Mr. Pardee is not here, and I cannot send you stock certificate till he comes. As you intend to sell, it is useless to forward certificate. I have arranged for the disposition of $1,000 of it to-day, and will be as prompt as possible in placing the balance."

On the 14th of February, 1876, (Exhibit 7, p. 31,) J. Tome wrote to R. B. Claxton: "Enclosed I send you power of attorney to sell and transfer the stock in your bank, and it will not be necessary to forward me a certificate. As fast as sold you can remit me for the same."

On the 16th of February, Claxton replied to Tome, (Exhibit 15, p. 34:) "Your favor of the 14th inst. received, with p. —— a, as stated. I am now negotiating with several parties for the sale of your stock, and will report and remit promptly should I sell any stock."

The power of attorney referred to is Exhibit No. 19, p. 35. The stock book (Exhibit 22, p. 35) shows that J. Tome's account is charged, Feb. 21, 1876, with ten shares of stock, $500, to A. Scott, and ten shares to Henry Scott, and the same day (Ex. 23, 35) Henry Scott is credited with ten shares, and Amos Scott (Ex. 24, p. 36) is credited with ten shares; and on the same day (Exhibit 16, p. 31) R. B. Claxton, cashier, wrote J. Tome, sending him an account of the sale of twenty shares of his stock sold for $1,050, and after deducting exchange, $1.25, enclosed him draft on Philadelphia for $1,048.75, the proceeds of the sale, and adds "I have prospects of selling more very shortly."

On the 26th of Feb. (Exhibit 8, p. 32) J. Tome wrote to R. B. Claxton, cashier: "If you can get $104 for the stock instead of $105, and close up the sale and remit, you can do so. I want to have it closed as soon as you can conveniently."

The firm of Powell & Co. (p. 17, marginal p. 64) failed

March 12, 1876, and April 13, 1876, made a voluntary assignment for the benefit of their creditors.

The relations between Powell & Co. and the Watsontown Bank were very intimate. Martin Powell, the head of the firm of Powell & Co. (p. 24, marginal p. 94) was a director in the Watsontown Bank, and R. B. Claxton, cashier of the Watsontown Bank, was a member of the firm of Powell & Co., (p. 26, marginal p. 60,) and this fact was known (p. 19, marginal p. 73) to the directors of the Watsontown Bank during all the time that he acted as cashier and while he was a member of the firm.

On the 14th of April, 1876, (Exhibit 18, p. 34,) Oscar Foust, attorney for the Watsontown Bank, wrote Mr. Tome: "Some time since you sent to our bank a certificate of stock originally issued to Powell & Co., and by them transferred to you, for $10,000. This transfer was never approved by our president or board of directors, and we will not do so or cannot under the act of assembly regulating banks in this commonwealth, so long as Powell & Co. are indebted to us either as drawer, maker, or endorser for matters due and unpaid. And as this is the existing state of facts, we cannot permit a transfer to be made until we are secured to the satisfaction of our board of directors for all their liabilities."

Mr. Tome (p. 15, mar. p. 56) swears: "The first notice that I had that the Watsontown Bank made any claim upon this stock was by the letter of Mr. Foust, dated April 14, 1876, which, by reason of my absence from home, I did not receive until the 23d or 24th of April, and to which I replied on the 24th of April."

To this letter (Exhibit 11, p. 32) Mr. Tome writes to Mr. Foust: "In reply, I would say that when I sent the stock to the cashier for transfer he made no objection to it, but assigned as a reason for not sending me a certificate the absence of the president, and that on his return he would do so. Sub-

sequently, when I directed him to sell the stock, I sent him, at his request, a power of attorney to do so, and under it he sold twenty shares and remitted me the proceeds, adding that as I wanted to sell the stock it would not be necessary to send me a certificate. I was at the bank on the 13th inst. and saw some of the directors and cashier, none of whom objected to the transfer of the stock to me; but, on the contrary, they made me an offer for the balance of the stock. The price was not sufficient, and since I have concluded to keep it, and want a certificate for it Assuredly, after the cashier having offered me a certificate, and then acting as my agent in the sale of a part of it, without any objection from directors or officers, it cannot now be withheld and the stock applied to any other purpose than that for which I held it. It is too late to object now. Had it been done at first I might otherwise have secured myself. Entertaining these views, unless the certificate for the balance of the stock is made to me, I will have to take such steps as may be necessary to obtain it."

On the 8th of May (Exhibit 9, p. 32) Mr. Tome wrote to R. B. Claxton: "Having concluded to keep the balance of my stock of your bank unsold, you will please forward me certificate for the same by return mail."

To this, on the 15th of May, 1879, Mr. Claxton replied (Exhibit 17, p. 34,) that he had laid his letter of the 8th inst. before the board of directors, at their meeting to-day, and that he was "directed to say to you that they forbid my transferring the stock, because, under the banking laws of this commonwealth stockholders are not permitted to make transfer of stock so long as they are indebted to the bank either as drawers, makers, or endorsers or guarantors for debts due and unpaid; and as this was the situation of Powell & Co. at the time you forwarded me the certificate, it comes within the prohibition, and they cannot approve or allow the

the same until the said debts are paid or secured with satisfaction to the board of directors."

Mr. Tome on the 19th of May (Exhibit 10, p. 32) wrote to R. B. Claxton, cashier: "Your letter of the 15th inst. is received, declining to transfer the stock, which you promised to do. In reply, have only to say I shall proceed to make you do it."

The cashier, in making the transfers and entries upon the stock ledger, first from Powell & Co. to the Manufacturers' National Bank, then back to Powell & Co., and then to Tome, and afterwards from Tome to the Scotts, was acting within the customary line of his duties and according to a practice which was known to and recognized by the directors. It was his business, as cashier of the bank, to keep the stock ledger and certificate book. The bank had no distinctive transfer book except the stock ledger. It was his business, as cashier, to have charge of all the books of the bank, without consultation with the directors, except in cases where he was specially instructed by them. (Testimony of Claxton, printed record, pp. 18, 19, and 20.)

There is no proof whatever going to show that the powers of the cashier with respect to the transfer of stock was ever in any manner limited or restricted, either by the by-laws or any rule of the bank, or even by verbal instructions from the directors, or any of them, until after the transfers of the 4th Feb'y, '76, and the visit of Tome to the bank on the 13th of April following.

The Watsontown Bank went into operation in January, 1873. Its capital stock was $120,000. (See printed record, pp. 7, 27, and 29.) In 1875 the directors were Samuel Caldwell, A. Pardee, Martin Powell, Peter D. Shaffer, Joseph Nicely, Jr., S. Rambach, Simon Schuyler, and John B. Leinbach. In 1876 the directors were Samuel Caldwell, Silas Rambach, Thompson Bowen,

John B. Leinbach, Charles Heilman, Martin Powell, Ario Pardee, and John B. Goodman. The elections were held on the last Monday in January. (P. 25.) Ario Pardee was president from January, 1874, till January, 1877. He resided at Hazelton, Penn., and visited the bank, as president, not over once a year. (P. 22.) R. B. Claxton, Jr., was cashier from January 1, 1874, until October, 1876, when he left the bank. (P. 17.) George W. Rambach was teller from January, 1874, until November, 1876, when he became cashier, as the immediate successor of R. B. Claxton, Jr. (P. 26.)

The firm of Powell & Co. were engaged in the banking business at Williamsport, Penn., and was composed, in February, 1874, of R. B. Claxton, Jr., Oliver Evans, and Martin Powell. On December 4th and 20th, 1875, the same partners were retained, with the addition of R. S. Bailey. R. B. Claxton, Jr., and Martin Powell were the same persons who were, respectively, cashier and director of the Watsontown Bank.

ARGUMENT.

I.

Conceding for the present all that is claimed for the Watsontown Bank under sec. 10, art. 10, of the act of assembly of Pennsylvania, entitled "An act regulating banks," it is, nevertheless, insisted that the proof in the cause does not sustain that clause of the decree which requires the complainant to pay $5,215.67, with interest from February 1, 1876, before it could demand a transfer and certificate for 180 shares of the capital stock of the Watsontown Bank, embraced in certificate No. 63.

Under the first "act regulating banks," passed the 21st

March, 1813, (6 Sm. L., 154,) the language was materially different from that used in the later acts of 1824 and 1850.

Chief-Justice Tilghman, in 1826, clearly defined the difference. He said:

"In the act of 25th March, 1824, entitled 'An act to recharter certain banks,' the words of the 11th fundamental article are strikingly different from those of the same article in the act of 1814. Instead of saying 'no stockholder *indebted to the institution*,' the expressions are, 'no stockholder *indebted to the bank for a debt, actually due and unpaid*, shall be authorized to make a transfer,' &c. This, however, was not intended as an *explanation* of the first law, but an alteration in consequence of a change of policy. What occasioned this change of policy it is unnecessary to inquire."

Grant *vs.* The Mechanics' Bank of Phila., 15, and S. & R., 144.

Under the words of the first law, all debts, liabilities, or obligations, if contracted though not due, were included; but under the present law no debt, unless "actually due and unpaid"—*solrendum in præsenti*—can be set up as a lien before transfer.

Klopp *vs.* Bank, 46 Penn., 88.

See, also, Reese & Fisher *vs.* Bank of Commerce, (14 Md.,) where equipollent words are construed.

If this rule of interpretation be applied to the condition of the accounts as they appear in the record on the 1st February, when the old certificate and the demand for a transfer were received and acknowledged by Claxton, and his answer returned, promising to forward the certificate on the 7th, all obligations of Powell & Co. not then due must be excluded. This disposes finally of all the notes, excepting those of John Marshall & Co. for $350, and A. T. Nichols

& Co. for $800. (P. 39.) The accounts as submitted (p. 36) up to 28th January stand wholly unsupported by proof, though objection to their presentation and admissibility was duly taken and entered before the commissioner. (P. 25.) The statutory lien, if it existed at all, was a secret lien as against all persons other than officers and stockholders, and hence could only be asserted upon strict proof of the indebtedness of Powell & Co., when the effort was to defeat a transfer for the benefit of a third party, who had purchased and paid full value in good faith. If the attempt to set up the account fail, and all obligations of Powell & Co not matured be excluded, then the indebtedness, which could be rightly held against the stock, would be limited to the two notes above mentioned, amounting, together, to the sum of $1,150 And this is all that the directors, if they had been present, in force, on the 1st February, ready to oppose the transfer with every objection, could have rightly claimed. That bank-books are not evidence against strangers for any other purpose than to establish certain corporate acts and proceedings, such as the election of officers, see Phillip on Evidence, (II, pp. 295, 6, and 7, Fourth Amer. Ed.)

Books of incorporated banks, &c., stand upon a different footing, generally, in this country from the books of the Bank of England. The former are not public books, in the sense in which that term is understood by the courts, except as among the members of the corporation. In other cases the rules of admissibility in regard to them, as well as the mode of authenticating entries in them, are not essentially varient from those which relate to books of a more private nature.

Ridgway *vs.* Farmers' Bank of Bucks County, 12 S. and R., 256–263.

The Philadelphia Bank *vs.* Officer, *Ib.*, 49.

Courtney *vs.* The Commonwealth, 5 Rand., 66.
Angell & Ames on Corp's, 406–7–8, and 9.
Graff *vs.* Pittsburgh & Steubenville Railroad Co., 7 Casey, 495.

II.

It was not competent for the Watsontown Bank, by its board of directors or otherwise, to interpose any objection to the transfer of the stock to Tome on the ground that Powell & Co., the former holders, were indebted to their bank because they had full and ample notice of the transfer by Powell & Co., first to the Manufacturers' National Bank of Philadelphia in November, 1873, and afterwards of the stock included in the new certificate No. 63, to the Cecil Bank, (p. 16, top and bottom.) Two of the partners of Powell & Co. were officers of the bank. Martin Powell was a director and Claxton cashier of the Watsontown Bank, and they made no concealment of their connection with the firm. Their firm was a regular customer of the bank in high credit and standing. Claxton talked freely with the directors, and Powell made known to them in January, 1864, and again in January, 1865, that the stock of the firm was out as collateral, and himself raised the question of his right to vote at the elections of those years, and not one of the other directors has attempted to deny their statements. With a knowledge thus full, intimate, and exact brought home to the cashier and the directors, it cannot be said that they had not ample information to put them on their guard in their dealings with Powell & Co., and to apprise them that they could not rely upon the security of the stock held by Powell & Co. for any advances or discounts they might make to or for them.

Where money was lent by a bank to a stockholder after

notice of the assignment of his stock the shares are not pledged for its repayment.

Nesmith *vs.* Washington Bank, 6 Pick., 324.
Alvord *vs.* Smith, 5 Pick., 232.
Sargeant *vs.* Franklin Ins. Co., 8 Pick., 90.

A subsequent board of directors of a bank is to be considered as knowing all the circumstances communicated or known to a previous board.

The Mechanics' Bank of Alexandria *vs.* Seton, 1 Peters, 309.

From a consideration of the whole case it must be apparent that credit was given to Powell & Co. not on the strength of their stock, which was known to be in the hands of other parties, but solely on the ground of their ability and means as bankers and upon their personal guarantee.

III.

The transfer was actually made by the proper officer in strict conformity with law and good faith on the books of the company on the 4th of February, 1876, and after the Cecil Bank had reposed securely upon that action and the Watsontown Bank had acquiesced in it for more than two months, it is too late for the defendant to refuse compliance with the demand for a certificate.

1. This provision is designed to protect the banks. It is their privilege to avail themselves of it, or, if they choose, to waive their rights under it. There is nothing in the language of section 10, article 10, that expressly confers any power or enjoins any duty upon the directors except the last clause, which asserts that if a new security be given it should

be "to the satisfaction of the directors." The positive direction is that the stock shall be assignable "on the books of the corporation only" and "in the presence of the president *or* cashier." The expression is disjunctive. The assignment may be made in the presence of either the president or cashier. The words, "in such manner as the by-laws shall ordain," are inoperative in this case, because the bank had no by-laws; at least, none are in proof. In the remaining clause there is no inhibition upon the cashier from transferring the stock of a debtor stockholder, or from paying him a dividend, or from waiving altogether the lien of the bank. There is no provision that the directors only may waive the lien. If there be any disability imposed at all, it is upon the stockholder alone, for the language is "no stockholder indebted, &c., shall be authorized to make a transfer or receive a dividend until," &c.

Grant and others *vs.* Mechanics' Bank of Phil'a, 15 S. and R., 143.

There are vastly stronger cases in which it has been held that a corporation may waive the privileges which have been established for its own protection.

The by-laws regulating the transfer of the stock of a company were as follows:

"20th. No transfer of any share or shares in the capital stock of this company shall be good or available unless the same be made on the books of the company and be attested by the secretary.

"21st. No holder of stock shall have the power to transfer the same so long as he is indebted to the company, unless with the consent of the board of directors."

Interpreting these the court said: "Where a by-law required the consent of the directors to a transfer of stock by

a stockholder, indebted to the company, but in the practice of the company such cases were never brought before the board, a transfer by such a stockholder, made without that consent, but according to the usage of the company, is good against the company."

Chambersburg Ins. Co. *vs.* Smith, 1 Jones, (Penn.,) 120.

The restrictions upon the right of transfer in the case last cited were imposed by by-laws; but it is the same whether they be by law or even by constitutional provision.

In Hall *vs.* U. S. Ins. Co., (5 Gill., 499,) the language of the court is: "And there is quite as little weight in the appellants' second reason, assigned in support of his objection, founded on the ninth section of the act of assembly of 1831, (ch. 191,) which declares that no stockholder indebted to the company shall be permitted to transfer his stock until such debt be paid or secured to the satisfaction of the president and board of directors. The object of this section was to confer a privilege, not to impose an imperative duty, upon the company. Being a privilege, it might be waived or asserted at the pleasure of the president and directors. And the transfer having been by them permitted it was as valid and obligatory upon the appellant as if no such indebtedness had existed."

The distinguished judge (Story) who gave the opinion in The Union Bank of Georgetown *vs.* Laird (2 Wheaton, 390) was evidently of opinion that it was in the power of the bank to waive the benefit of its statutory lien, and to let in the equitable title of the plaintiff. The bill in that case charged that when the indebted stockholder obtained the certificate of his shares of stock it was with a view of pledging those shares for the indemnification of the plaintiff, and that the officers of the bank had knowledge of that fact; and, fur-

ther, that the power of attorney was granted with the same view. The directors denied in their answer any knowledge of the object for which the certificate was granted, and alleged that they knew nothing of any claim of the plaintiff upon those shares until after the acceptance of the stockholder had been protested. The plaintiff failed to prove his allegations, and the decision in favor of the bank was put upon that ground.

See The Mechanics' Bank of Alexandria *vs.* Seton, 1 Peters, 309.
Brent *vs.* the Bank of Washington, 10 Peters, 613.
Balt. City Passenger Railway *vs.* Sewell, 35 Md., 253.
United States *vs.* Cutts, 1 Sumner, 148–9.

It has never been held that a corporation can avail itself of its own negligence as a basis of a cause of action against a stockholder, nor that it is not competent to waive a performance of its own rules, nor that it may not be estopped by its own acts and official declarations the same as natural persons. A person may waive provisions for his own benefit in a contract or a law, and in some cases in the Constitution itself.

49 N. Y., 222.
3 N. Y., 197–511.
2 Conn., 252.

2. Was it competent for Claxton, as cashier, to make the transfer on the books of the bank? There can be no doubt on this point. Section 10, article 10, in express words declares that the stock shall be assignable in the presence of the president or cashier. There is no proof that any transfer was ever made in the presence of the president. The

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The cashier of an incorporated bank is the general executive officer to manage its affairs in all things not peculiarly committed to the directors.

Bissell *vs.* First Nat'l Bank of Franklin, 69 P. S. R., 415.
Harrisburg Bank *vs.* Tyler, 3 W. & S., 376.
Bank of Penn. *vs.* Reed, 1 W. & S., 101.
Story on Agency, secs. 114, 115.
Bank of K'y *vs.* Schuylkill Bank, 1 Pars. Eq., 180.
Lloyd *vs.* The West Branch Bank, 3 Harris 179
Merchants' Bank *vs.* State Bank, 10 Wal

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Bank of K'y *vs.* Schuylkill Bank, 1 Pars. Eq., 180.
Lloyd *vs.* The West Branch Bank, 3 Harris, 172.
Merchants' Bank *vs.* State Bank, 10 Wall., 650.

The cashier, unless the charter or by-laws of the bank forbid it, may properly make or superintend the transfer of shares of the capital stock, and a person showing a *prima facie* legal right to claim such a transfer to himself may demand it from that officer or any other principal officer left in general charge and superintendence of the bank, during the regular hours appointed by the bank for the transaction of banking business.

Smith *vs.* Northampton Bank, 4 Cush., (Mass.,) 1, 11.
Morse on Banking, (3d ed.,) ps. 155, 177.

As to powers and duties of cashiers in the transfer of shares, see Case *vs.* Bank, (100 U. S., 453–4, and 5.)

3. We have now to consider the effect and consequences of a transfer when made by the cashier on the books of the bank, though done in contravention of the lien for debts due from the old stockholder.

As between a corporation and corporator the stock book is the primary evidence of their relation. The certificate is only secondary evidence.

Bank of Commerce's appeal, 73 P. S. Rep'ts, 59.

In Roberts' appeal, (85 P. S. R., 84,) the court held, affirming the court below, that the transfer on the books of the corporation vested a legal title in the stock, and that the certificate was only the evidence of the substantive act of the transfer.

After quoting the corresponding section in the charter of the Lancaster Bank, being article 11 of the act of 1814, the supreme court of Pennsylvania said:

"The general understanding as well as the obvious meaning of this clause is, that if a transfer is permitted to be made on the books of the bank, the person to whom the stock is transferred would hold it discharged from any lien for debts due the bank. The security is put in the hands of the bank; no transfer can be made unless their officers produce the books and permit the transfer. If they do permit it the lien of the bank is gone. The transfer on the books is, in general, conclusive of the right, at least against the bank."

17 S. & R., 286.

And in commenting on the same provision of the statute, the same court said:

"Secret liens on any kind of property are abhorrent to our laws, because they check the spirit of enterprise and trade and entrap the unwary."

Presbyterian Congregation *vs.* Carlisle Bank, 5 P. S. R., 345.

See also Sargent *et al. vs.* Ins. Co., 8 Pick., 90.

A stockholder in a company empowered the secretary, in writing, to transfer a certain stock, in pursuance of which the secretary entered on the books that the stock was transferred "see paper filed," which paper filed, being the power, he wafered to the book and attested the entry of transfer as secretary, *signing no transfer as attorney.* Held, that this was a substantial compliance with the by-law, which required the transfer to be made on the books of the company and to be attested by the secretary.

Chambersburg Ins. Co. *vs.* Smith, 1 Jones, (Penn.,) 120.

Where A, owning shares in a bank, transfers them to B, and the bank issues a new certificate to B, the terms of the certificate making the shares "transferable after the holder pays all his liabilities to said bank," this is a waiver of the lien of the bank upon such shares for payments due from A.

Hill *vs.* Pine River Bank, 45 N. H., 300.

A stockholder in a corporation transferred his stock in good faith, but did not cause the transfer to be made upon the books of the company, as required by the statute of incorporation. The company had no transfer book, and the certificate required to be filed and recorded in the town

clerk's office was not signed by the officers of the company, as required by the by-laws, but was recorded by the direction of the company, who acquiesced and recognized the transferee as the owner of the stock. Held, that the original stockholder was not liable to pay calls upon the stock after the transfer.

Isham *vs.* Buckingham, 49 N. Y., 216.

In Hodges *vs.* Planters' Bank, (7 G. & J.,) 310, the opinion of the court was delivered by Chambers, judge, who said:

"The charter of the bank, (1817, ch. 16,) for its better security, and as a means of forcing the payment of debts due to it, gave the privilege of preventing the transfer of its stock, by any stockholder whose debt was actually due, until payment of the debt.

"This privilege the bank may waive. * * *

"The bank must act by its officers, and can act in no other mode. The transfer of stock is directed and managed by the president and cashier. The usual forms and ceremonies were observed in this case, as in all others of transfer of stock. The directors of the bank confide this duty to the president and cashier; persons receiving transfers know no other officers in the transaction. If fraud or collusion exist it will, as in all other cases, vitiate the act; but if there be no fraud or collusion, the bank, and not the transferee, must abide the loss, if a loss be sustained by any act of the proper officer of the bank, arising either from a misconception of his duty or a want of judgment. No fraud or collusion is pretended in the case before us, and the transfer must, therefore, as the matter stands upon the bill and answer, be considered effectual to pass the stock to the complainant for the purpose mentioned and intended in its terms."

In Morse on Banks, 507, it is said:

"If the bank suffers the transfer to be made upon its

books without the express stipulation that the shares shall be held by the assignee, subject to the lien for the then subsisting indebtedness of the assignor, it will amount to a waiver of the lien."

The legal relations of the two banks may not be altogether reciprocal in equal degree—the one being the corporation and the other a stockholder, and hence it may not be possible to measure with absolute precision the rights and liabilities of the one by defining the legal attitude of the other. Still we may throw some light upon this case by reversing the relative position of the parties and making the Watsontown Bank or its receiver, or its noteholders, or general creditors, complainant or complainants, as the case might be, to enforce from the Cecil Bank, or from Tome, its representative, the performance of some duty or the acknowledgment of some responsibility, devolved upon it or him, as one of the stockholders of the Watsontown Bank. Can it be supposed for a moment that the defendant in this new suit could escape any payment or contribution which the law might fasten upon a stockholder? Could Tome successfully deny that he was a stockholder in the face of the facts in this case? No amount of legal acumen that this land of learned lawyers could furnish would avail to relieve him from that relation. If, then, Tome is a stockholder, with obligations so clearly defined toward the corporation that he cannot escape the burden of its yoke, it must follow inevitably that Powell & Co. are no longer liable as stockholders; and this, because the transfer of the 4th Feb'y, 1876, made by Claxton, cashier, on the stock ledger, in the absence of any intimation of fraud or collusion, is good and binding against all the world and against all persons therein, both natural and artificial.

Webster *vs.* Upton, 91 U. S., 65.
Moore *vs.* Jones, 3 Wood C. Ct., 53.

Turnbull *vs.* Payson, 95 U. S., 418.
Pullman *vs.* Upton, 96 U. S., 328.

If Claxton, in making this transfer, has wilfully violated any provision of the banking act of Pennsylvania, he is liable in damages on the bond he was required to give under sec. 22 of that law, (Purdon's Digest, title, Banks, p. 73,) as well as criminally under its 26th section and other strenuous provisions.

Where there is no trust relation between the parties, and no obligation to deliver specific stock, the measure of damages for a failure to deliver stock is the market value of the stock on the day it should have been delivered, with interest thereon to the time of the trial.

Phillips' Appeal, 68 P. S. R's, 130.
86 *Ib.*, 247.
Sargeant *vs.* Franklin Ins. Co., 78 Pick., 90.

At the argument before the circuit judge, the counsel for defendant cited and relied upon Pittsburgh and Connellsville Railroad Company *vs.* Clark & Thaw, (29 P. S. R., 150;) but that case, it is respectfully submitted, is without authority upon the point under consideration. The learned chief-justice (Lewis) who gave the opinion clearly asserts that his only purpose was to define the law of transfers of stock, as embodied in the charter of the plaintiff. His words are:

"Our duty will be performed when we give a construction to the 7th section of the act of 19th February, 1849. That section directs certificates to be delivered to the persons entitled to receive them, 'which evidence of stock shall be transferable at the pleasure of the holder in a suitable book,

to be kept by the company for that purpose,' in the presence of the president or treasurer, subject, however, to all payments due or to become due thereon; and the assignee, or party to whom the same shall have been so transferred, shall thereupon be a member of said corporation, and have and enjoy all the immunities, privileges, and franchises, and be subject to all the liabilities, conditions, and penalties incident thereto, in the same manner as the original subscriber would have done: *Provided*, That no certificate shall be transferred so long as the holder thereof is *indebted* to said company, *unless the board of directors shall consent thereto;* and provided that no such tranfer of stock shall have the effect of *discharging any liabilities or penalties theretofore incurred by the owner thereof.*" Taking these two provisos together, they very plainly declare that a stockholder who is "indebted" to the company shall not transfer his stock without the "consent of the board of directors," and that such transfer, *even with the consent of the board*, shall not discharge "any liabilities or penalties theretofore incurred by the owner thereof."

"It is very clear that the defendants at the time of the alleged transfer of their stock were 'indebted' to the company to an amount nearly equal to the whole of their subscription. * * * So long as the stock remains unpaid the corporation has a right to refuse to receive new members in place of the original adventurers. Until the stock is fully paid up and the stockholders otherwise free from debt to the company, they have no right whatever to introduce strangers into the company in their places."

To this extent the reasoning of the court is sound and amply sustains the judgment which was given against the original stockholders for the balances remaining due on the subscriptions to the stock of the company. The plaintiff was a railroad company, organized under a special law of Pennsylvania, for the accomplishment of a difficult work of doubtful profit, to wit, the building of a railroad. It was important that the corporators should be men of the sound-

est reputation for courage, integrity, and responsibility, and that they should have the power to protect themselves against the introduction of new corporators until the entire stock subscriptions of the assignors, together with all penalties by them incurred, should be paid up. Hence, came the distinct and separate proviso, "that no certificate shall be transferred so long as the holder thereof is indebted to said company, unless the board of directors shall consent thereto," followed by another distinct and separate proviso "that no such transfer of stock shall have the effect of discharging any liabilities or penalties theretofore incurred by the owner thereof." These restrictions were intended to be temporary, and to expire the moment the stock subscriptions and all penalties were fully paid, and to be public and notorious in their operation—in these respects wholly unlike the restrictions upon assignments of stock in the bank act of Pennsylvania, which were to be continuous and secret and known only in their application to the officers and stockholders of the several banks. Besides, the object and business of this railroad company being so limited and restricted, it had no officer who, like a cashier, could rightly claim and exercise all the power and authority, not elsewhere entrusted, which may be needed to administer the affairs of a bank according to its usage, practice, and course of business. The president or treasurer or secretary of a railroad company, though possessed of very great power as the representative of his company, is yet far behind the autocratic individuality of a cashier in his dealings with strangers, so long as the strangers keep themselves clear from the contamination of fraud. The legislature, therefore, acted wisely in confining to the board of directors the power to consent to a change of corporators until the stock assigned should be fully paid for and all penalties satisfied, and the court acted wisely in

construing the statute in accordance with its true spirit and meaning.

On looking further into the opinion of the learned judge I find some positions assumed which cannot bear the light of recent decisions.

Proceeding, the learned judge further said:

"It is true that as between them (the assignors) and the purchaser, if the latter thought proper to contract for a contingent or uncertain interest, the transfer might be good for some purposes. (8 Pick., 90; 9 Pick., 202; 2 Cowan, 770.) But it passes no title to the stock, and confers no 'privileges, immunities, or franchises' whatever upon the purchaser. The consent of the board of directors is in itself the *originating act* in the change of title, and does not merely operate to perfect the conveyance previously begun. (2 Conn., 246; 3 Conn., 544; 5 Conn., 246; 6 Conn., 552.) So long as the stock remains unpaid the corporation has a right to refuse to receive new members in place of the original adventurers. Until the stock is fully paid up and the stockholders otherwise free from debt to the company, they have no right whatever to introduce strangers into the company in their places. A right which depends upon the consent of others is no right at all. The transfer to Mr. Stanton was therefore of itself a *nullity*."

All this is *obiter dictum;* and is therefore entitled to no immunity from just criticism. The usually clear mind of the learned judge is beset by hosts of shadows, when there is no need that shadows should appear at all. Once admit the distinction between corporators and strangers and accept the long line of decisions defining the rights of each class with respect to transfers, and a body of law may at once be invoked without which there would be no protection for transactions amounting sometimes to hundreds of millions in a day. But how can the learned judge reconcile his positions? He says in one place, "it is true that as between them (the assign-

ors) and the purchaser, if the latter thought proper to contract for a contingent interest, the transfer might be good for some purposes," and a little later, "the transfer to Mr. Stanton was therefore of itself a nullity." Bouvier defines "a nullity" to be "an act or proceeding which has absolutely no legal effect whatever;" and he defines "null" to signify: "Properly, that which does not exist; that which is not in the nature of things. In a figurative sense it signifies that which has no more effect than if it did not exist." How can "an act or proceeding which has absolutely no legal effect" still be "good for some purposes?" Or how can "that which does not exist," and "is not in the nature of things," be good or bad for any purpose? It would seem that the learned judge, in his eager pursuit of a band of defaulting stockholders, had for a moment closed his ears to the just demands of equity, and had preferred, rather than detract from the vigor of the law, to express himself in language a trifle short of his accustomed perspicuity. Again, he says: "The consent of the board of directors is in itself the *originating act* in the change of title, and does not merely operate to perfect the conveyance previously begun," and in support of this he cites a string of authorities all of which have been discredited by the same honored judge, who gave the opinion of this court in The Union Bank of Georgetown *vs.* Laird, 2 Wheat., 390. (See United States *vs.* Cutts., 1 Sumner, 149.)

The learned judge further says:

"In ordinary business transactions between a corporation and strangers the authority of agents and the existence of contracts may be implied from acquiescence and other circumstances. So where the assent of the board is required by a by-law only, the execution of the by-law may be modified by the practice of the corporation. (Ins. Company *vs.*

Smith, 1 Jones, 126.) But where the act of incorporation grants a power, the mode prescribed by the statute for its exercise must be strictly pursued. (5 Barb. Sup. Court Rep., 649; 2 Cranch, 127.")

If by this it is meant that it is only where the assent of a board of directors is required by a by-law, that such assent may be waived by the practice of the corporation, then the proposition is disproved by an impregnable array of authorities. In the citations hereinbefore made many cases are presented wherein the assent of the board of directors, though required by statute, has been presumed in support of transfers, entered on the stock-ledger in the handwriting of the cashier, conformably to the usage, practice, and course of business of the bank. A "power" is something widely different from a "privilege" in legal acceptation. The first must be strictly pursued; the latter may be effectually waived in dealings with an innocent stranger.

Finally, the learned judge adds:

"It is the duty of the directors to keep minutes of their proceedings, and the proper evidence of their assent to a transfer is a *recorded* resolution adopted when the board was in session. Where the transfer is made by a director, it ought further to appear that the resolution of assent was carried without his vote. If the resolution was adopted and entered on the minutes, the loss or destruction of the entry might be supported by parol proof. But in no other case can parol evidence be received to show that an assignee has been admitted as a member of the corporation in the place of the assignor."

If this were law, even in those cases where the assent of the board of directors is required by statute, who would be safe? How can a stranger obtain access to the minute-book of a corporation, to ascertain whether the action of the board has been regularly taken, and whether such action has been

regularly recorded, except by consent of the very persons who may be most hostile to his rights? How can the great world of business stop in its career to yield obedience to rules so arbitrary and exacting?

Fortunately, in the case before the court the assent of the directors is not required either by by-law or charter, by custom or usage. The Watsontown Bank is amenable to the ordinary rules of banking corporations. Its shares are saleable and transferable at the will of the owner, in the presence of the president or cashier, subject, it is true, to the privilege of the bank by its proper officer, to exact before or at the time of transfer, from every stockholder "indebted to the bank for a debt actually due and unpaid," the discharge of such debt. This privilege may be waived, and we insist that in this case it has been repeatedly waived—first by its dealings with Powell & Co. for years after they had twice assigned their stock with its full knowledge; then by the correspondence and acts of its cashier and his entries in due form of the transfer of the shares formerly held by Powell & Co. to Tome on its stock-ledger; then by the sale and delivery to the Scotts of a portion of those shares as the property of Tome, and the remittance to him of the money derived therefrom; and, lastly, by its long acquiescence whereby the Cecil Bank was prevented from otherwise securing its indebtedness from Powell & Co., who did not fail until more than a month after the transfer to Tome had been duly made.

JNO. A. J. CRESWELL,
of Counsel for Appellant.

OFFICE SUPREME COURT U. S.
FILED
MAR 17 1882
JAMES H. McKEN

IN

THE SUPREME COURT OF THE UNITED STATES.

No. 241 OCTOBER TERM, 1881.

THE CECIL NATIONAL BANK

vs.

THE WATSONTOWN BANK.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF FOR THE APPELLEE.

R. P. ALLEN,
OSCAR FOUST,
Attorneys for the Appellee.

HELLER BROTHERS, PRINTERS.

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Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF FOR THE APPELLEE.

The Watsontown Bank was incorporated under a special act of Assembly of the State of Pennsylvania, approved March 27th, 1872, Pamphlet Laws 1873, p. 1043, and was subject to the provisions of the act of Assembly, approved April 16, 1850, entitled "An act regulating banks," P. L. 1850, p. 478.

Section 10, article 10 of the latter act provides as follows :

"The stock of the bank shall be assignable and transferable "on the books of the corporation only, and in the presence of "the president or cashier, in such manner as the by-laws shall "ordain ; but no stockholder indebted to the bank for a debt "actually due and unpaid, shall be authorized to make a trans- "fer or receive a dividend until such debt is discharged, or secu- "rity to the satisfaction of the directors given for the same."

Powell & Co., in January, 1876, and for some two years pre-

vious, were the owners of two hundred shares of the capital stock of the Watsontown Bank, of Watsontown, Pennsylvania.

They attended the annual election of stockholders in January, 1875 and 1876, and received the dividends to and including January, 1876. Page 27, marg. p. 106. G. W. Rambach testifies: "Powell & Co. received the dividends on the stock in question of January, 1876. They also received all the dividends previous to that time. There have been no dividends declared since that time. Powell & Co. voted the stock at the elections in January, 1875, and in January, 1876. Powell himself was present and voted. The election in January, 1876, was on the 31st day of January."

On the 28th of January, 1876, there was due and unpaid to the bank from Powell & Co. the sum of $5,215.67 for discounts made by the bank for them of commercial paper, and which was all either endorsed or guaranteed by them. P. 25, marg. p. 98; also, exhibit No. 24, pp. 36, 37 and 38. All the parties to the paper discounted by the bank for Powell & Co., whether drawers or endorsers, became insolvent in the early part of the year 1876. P. 28, marg. pp. 111 and 112.

Powell & Co. carried on a private banking business at Williamsport, Pa., and failed March 12, 1876, (p. 17, marg. p. 64), therefore the only available security the Watsontown Bank had for the indebtedness of Powell & Co. was their statutory lien on their stock.

Powell & Co. had pledged the certificate of stock for their 200 shares as collateral security to the Cecil National Bank of Maryland prior to January 28, 1876.

On the 31st of January, 1876, the cashier of the Cecil National Bank sent to R. B. Claxton, Esq., cashier of the Watsontown Bank, the certificate for the two hundred shares with a request that a new certificate in the name of J. Tome should be returned to him. This letter was received by R. B. Claxton, cashier, February 1st, 1876. A correspondence between Claxton and the Cecil National Bank followed, Claxton promising to

send a new certificate after the organization of the board and the election of a president, stating in his letter of February 1, 1876, (exhibit 5, p. 31, marg. p. 123), that there were no certificates signed in the stock book, and that Mr. Pardee, the president, was not there.

On April 14, 1876, Oscar Foust, Esq., attorney for the Watsontown Bank, wrote to J. Tome, as follows:

"Some time since you sent to our bank a certificate of stock, "originally issued to Powell and Co., and by them transferred to "you, for $10,000. This transfer was never approved by our "president or board of directors, and we will not do so, or can- "not under the act of Assembly regulating banks in this Com- "monwealth, so long as Powell & Co. are indebted to us either "as drawer, maker or endorser for matters due and unpaid. "And, as this is the existing state of facts, we cannot permit a "transfer to be made until we are secured to the satisfaction of "our board of directors for all their (Powell & Co.) liabilities." Exhibit No. 18, p. 34, marg. p. 135.

Following this letter, R. B. Claxton, Jr., under date of May 15, 1876, wrote J. Tome, Esq., as follows:

"Your favor of 8th inst. was duly received and contents noted, "and the same laid before our board of directors at their meet- "ing to-day, and by them I am directed to say that they forbid "my transferring the stock, because under the banking laws of "this Commonwealth stockholders are not permitted to make "transfers of stock so long as they are indebted to the bank, "either as drawers, makers or endorsers or guarantors (for debts "due and unpaid), and as this was the situation of Powell & "Co. at the time you forwarded me the certificate, it comes with- "in the prohibition, and they cannot approve or allow the same "until the said debts are paid or secured to the satisfaction of "the board of directors." Exhibit No. 17, p. 34, marg. p. 134.

The court below held—

"1. That the Watsontown Bank, the respondent, might law- "fully refuse to permit a transfer of the stock of Powell & Co.

"in said bank until their indebtedness actually due and unpaid "at the time when the allowance of said transfer was demanded "was paid or secured to the satisfaction of the directors of said "bank."

This proposition can scarcely be questioned, as it is simply a statement of the requirements of article 10, section 10 of the act of Assembly of 16th April, 1850, under which the bank was incorporated.

It was held by the Supreme Court of Pennsylvania, in Assignees of Waln vs. The Bank of North America, 8th Sergeant and Rawle, 72, that a stockholder who borrows money of a bank, with full knowledge of an usage not to permit a transfer of stock while the holder is indebted to the bank, is bound by such usage, and neither he nor his assignees, under a voluntary general assignment, can maintain an action against the bank for refusing to permit his stock to be transferred.

The act of 16th April, 1850, supplied the place of the act passed March 21, 1813, (6 Sm. L., 154,) the 11th article of the 7th section of which enacted, "That the stock of each of the said "companies shall be assignable and transferable on the books of "the company only, in the presence of the president or "cashier, and in such manner as the by-laws shall ordain; but "no stockholder indebted to the institution shall be authorized "to make a transfer or receive a dividend, till such debt shall "have been discharged, or security, to the satisfaction of the di- "rectors, given for the same."

The only difference between the language of this act and the one in question is the use of the words in the act of 1850, "indebted to the bank for a debt actually due and unpaid," in place of the words in the former act, "indebted to the institution."

It was ruled in Rogers vs. The Huntingdon Bank, 12 Sergeant and Rawle, 77:

That where a stockholder who was indebted to a bank on a note discounted and also for an installment due upon the capi-

tal stock, and gave a power of attorney to receive the dividends in his own name, and at the same time another power of attorney to the plaintiffs, who placed in the hands of the attorney a sum of money to pay the installment, and the attorney, after depositing the money to his own credit, drew a check in favor of the stockholder and the money was applied to the payment of the installment, no notice having been given to the bank of the power to transfer the stock until some months afterwards, the plaintiffs were not entitled, either to a transfer of the stock or to the return of the money which had been applied to the payment of the installment.

The word "indebted" was interpreted in Grant vs. Mechanics Bank, (15 Sergeant and Rawle, 140,) to cover a case where a stockholder was a drawer of a note discounted in a bank and he demanded a transfer of his stock before his note became due, but at a time when he and his endorser had become insolvent, and the bank was justified in refusing to permit the transfer.

And in Sewall vs. The Lancaster Bank, 17 Sergeant & Rawle, 285, the court held:—That where a levy had been made on the shares of a stockholder on a judgment of his creditor, and at the time the notes of the stockholder discounted by the bank had been renewed and fell due after the time of the levy, still the bank had a paramount lien on the stock under the provisions of the act of Assembly, and the vendee of the sheriff was not entitled to a transfer.

In the case of Klopp and Stump vs. The Lebanon Bank et al., 10 Wright, 88, the right of lien of a bank on the stock of its indebted stockholders, and when it commences, under the act of April 16, 1850, received a construction, and it was held:

1. That the act of Assembly, approved April 16, 1850, which prohibits the transfer of bank stock or the receipt of dividends thereon by any stockholder who may at the time be indebted to the bank, though intended mainly for the security of the bank, operates also incidentally in favor of the endorsers of such debtors.

2. The right of a bank to prevent such transfer or payment becomes absolute as soon as any such debt becomes due and payable, and the legal title to the stock remains in the bank for its own security until payment, and for the benefit of the sureties of a debtor, if there be any, afterwards.

3. The sureties of such indebted stockholder are in equity entitled to be subrogated to the security thus held by the bank, which equitable right attaches the instant the lien of the bank commences, and is consummated by payment of the debt for which they were surety.

Similar acts of Assembly and laws of banks have been before the United States Supreme Court, and the adjudications therein have been in entire harmony with the rulings of the Supreme Court of Pennsylvania.

In Union Bank vs. Laird, 2 Wheaton, 390, the court say:

"No person, therefore, can acquire a legal title to any shares, "except under a regular transfer, according to the rules of the "bank; and if any person takes an equitable assignment, it must "be subject to the rights of the bank, under the act of incorpo- "ration, of which he is bound to take notice."

In Brent vs. Bank of Washington, 10 Peters, 596-616:

The court in delivering the opinion comment and approve the doctrine as laid down in Waln's Assignees vs. The Bank of North America, 8 S. & R., 73, and Union Bank vs. Laird, 2 Wheaton, 393, supra.

The amount of the indebtedness of Powell & Co. to the Watsontown Bank, actually due and unpaid before February 1, 1876, was $5,215.67. This sum was for notes discounted by the bank for them, the proceeds of which were credited to and used by them (Powell & Co.) prior to that date, and their liability upon these notes was by their indorsements of some of them and by their guarantee of payment of the remaining notes.

We contend that it can not be argued that the bank could not demand payment from Powell & Co. because they were guarantors

without first pursuing the other parties upon the notes. The proof in this case is that all the parties upon the notes, the payment of which had been guaranteed by Powell & Co., became insolvent in the early part of 1876. John Piatt testified: "I was Deputy "Sheriff of Lycoming county for the years 1875, 1876 and 1877. "I have been connected, off and on, with the Sheriff's office for "about thirty years, either as Sheriff or deputy. I know N. P. "Davidson & Co., John Ransom, A. T. Nichols & Co., E. D. "Trump, R. M. Forsman, John Vanderslice, and Theodore "Hill. All these parties are and were residents of this county, "and were engaged in business here. I don't think there could "have been anything collected by legal process from any of "these parties since the early part of 1876. We sold out the "personal property of N. P. Davidson & Co., of A. T. Nichols "& Co., and I think the household goods of R. M. Forsman. "We had executions against Ransom, Vanderslice and the "other parties, except Hill, but could find nothing to levy on." P. 28; marg. pp. 111, 112.

The form of the guarantee of Powell & Co. was:

"We enclose for discount; payment guaranteed." Ex. No. 29, p. 40; marg. p. 141.

The liability of Powell & Co. upon these notes makes the indebtedness which creates the lien of the bank on this stock, and this lien continues until this debt is paid, or secured to the satisfaction of the directors. The bank had the right to have additional security on the notes, and even if in bringing actions for the collection of any of the notes suits would have to be brought against the makers or endorsers, before sueing Powell & Co. as the guarantors, this fact does not destroy their liability to the bank upon the same paper, and for the purposes of the lien upon the stock it remains the indebtedness of Powell & Co. until paid by some of the parties liable thereon. But all the parties to these notes had become insolvent, and there can therefore be no question about the absolute liability of Powell & Co. upon them, and demand for payment and suits could have been brought against them (Powell & Co.) in the first instance.

The Circuit Court held :

" 2. That this condition might be waived by the said directors, " but that there was no evidence that it was waived by them.

" 3. That authority to make such waiver is not within the " scope of the general powers of the cashier of said bank ; nor " is there sufficient evidence of presumptive authority to that " effect from the previous exercise of it in similar cases or other- " wise, with the knowledge, consent or acknowledgment of the " directors.

" 4. That the acts, correspondence, and engagements of the " cashier of the bank do not import an agreement to promote a " transfer of the legal title to the stock in controversy, which " equity would enforce against the bank, nor will they estop the " bank from insisting upon the payment or securing of the in- " debtedness of Powell & Co. previous to such transfer."

There is no evidence in this case that the president or directors by any act waived the statutory lien of the bank on the stock of Powell & Co. The stock was never transferred on the books of the bank to the appellant, nor was any new certificate issued therefor to J. Tome or to the Cecil National Bank, and there is no evidence that the president or directors knew anything of the acts and correspondence of R. B. Claxton, the cashier, except the letter of May 15, 1876. Exhibit No. 17, p. 34, marg. p. 134. Samuel Caldwell, the vice president of the bank at the time of these transactions, and who resided at Watsontown, testified p. 22, marg. p. 84 :

"I was elected vice president about January, 1874, and held that office until I was elected president. While I was vice president Ario Pardee was president of the bank. He resided in Hazleton, Pa."

Question :

State how frequently Mr. Pardee as president visited the bank ?

(Objected to by counsel for plaintiff because irrelevant.)

Answer :

Not over once a year, to the best of my knowledge. In his absence I acted as president. I was from week to week elected president pro tem. While I acted as vice president I was at the bank about twice a week on the average. * * * Our directors met once a week, on Mondays.

Question :

Please state when you first heard that Jacob Tome or the Cecil National Bank, of Port Deposit, claimed to be the owners of any of the stock of your bank?

(Objected to.)

Answer :

I knew nothing of their owning it until Mr. Tome was up there at Watsontown—I mean his visit of April 13, 1876. * * * I have seen exhibit No. 18.

Question :

Please state whether that letter was written and sent in pursuance of directions given by the board of directors, or by yourself as Vice President, to Mr. Foust?

[Plaintiff asks whether there was a meeting of the board and a resolution passed and committed to writing in reference to his authority.

Witness answers: There was no resolution passed by the board which was committed to writing.]

Answer :

It was. The direction was given by myself and the number of directors we could get there. I think there was three or four. We directed him verbally. I have seen the printed copies of letters in this case purporting to be signed by R. B. Claxton, cashier, and by J. Tome, and by R. C. Hopkins.

Question :

Please state whether as vice president of the Watsontown Bank you knew that any of the said letters purporting to be signed by

Claxton had been written and sent by him, or that any of the letters signed R. C. Hopkins or J. Tome had been received by him or by the bank?

(Objected to.)

Answer:

No; I did not know anything of the letters until after the middle of April, 1876.

Question:

Please state whether you or the board of directors authorized R. B. Claxton, cashier, or directed him to write any of the letters offered in evidence, except the letter exhibit No. 17, purporting to have been written by him?

(Objected to.)

Answer:

Neither I nor they authorized him, nor knew of his writing any of the letters, except exhibit No. 17. Pp. 22, 23; marg. pp. 89–92.

John H. Goodman, a director, p. 27, marg. p. 107, and J. B. Leinbach, another director, p. 27, marg. p. 109, testified to about the same state of facts.

The foregoing citations of testimony show that the acts of Claxton, the cashier, were done without the knowledge or consent of the president, vice president or board of directors of the bank. The acts of this cashier, relied upon by the appellant to found an agreement to promote a transfer of the legal title to the stock in controversy were, his letter of February 1, 1876; his entry in the stock ledger of February 4; his letters of February 5, 8, 11 and 16; his sale of stock to the Scotts, on February 21, and the entry of the transaction in the stock ledger; his letter of that date and remittance to Mr. Tome.

The assent on the part of Claxton to sell this stock for the appellant, and the sale of 20 shares by him and those parts of his letters relating to the sale, were the acts of Claxton as the agent of the appellant, and cannot be considered as the acts of the

agent of the bank. The power of attorney from Tome was to him individually—p. 35, marg. p. 136—and they were in fact the acts of the appellant. Whether Claxton, on account of his official relation with the bank, should have consented thus to act for him is not in controversy; but from these acts nothing can be implied to militate against the plain legal rights of the bank.

The act of Claxton in making the entry of this stock in the stock ledger to the credit of Tome and charging the same to the account of his firm, (Powell & Co.,) is not claimed by the appellant as a transfer of this stock to appellant. The bill in the case prays for an order and decree that the appellee "may be compelled to permit transfers to be made upon the books of said The Watsontown Bank to the said The Cecil National Bank," * * "and to issue certificates therefor." P. 5; marg. p. 19. This entry by Claxton in the ledger cannot in any sense be taken as a transfer, which must be made on the transfer book of the bank, in which there was no entry made at all; and in that book as required by the statute, the stock of the bank shall be assignable and transferable "in the presence of the president or cashier in such manner as the by-laws shall ordain."

The court in Klopp and Stump vs. The Lebanon Bank, speaking of this clause in the act regulating banks, say:

"The provision for transfer is a necessity, not only that the "bank may know its stockholders, but that the security of its "lien may be protected against secret assignments."

If Tome himself had appeared at the bank on February 1, 1876, and demanded a transfer of this stock to be made by Powell & Co. to him in the presence of the proper officer of the bank, he then would have learned of the lien of the bank upon it.

The promise of Claxton as cashier to send a certificate to the appellants upon the election of a new president and his assumption of the duties of his office, cannot be assumed to create an agreement on the part of the bank to transfer the stock, or to waive the statutory lien of the bank upon the stock of Powell & Co.

It is not claimed that Claxton ever agreed with the appellant that the stock in controversy should be transferred discharged from the lien upon it for the indebtedness of Powell & Co.

There is no semblance of an agreement of waiver of this lien, and we cannot see even how an assent on the part of a cashier to transfer stock can be construed into a waiver of a statutory lien upon it. No previous usage of the bank was shown where the cashier was allowed to enter transfers of stock not in accordance with the charter of the bank, and clearly it is not in the purview of the authority of the cashier to violate the charter of his corporation and to waive its statutory privileges by which its property is protected. The continuous usage of a corporation may work a repeal of its by-laws regulating its mode of business. But we contend that no usage can repeal a statute under which a company is organized.

We cite upon the question of the waiver of the lien of the bank the case of The Mechanics Bank vs. Earp, 4 Rawle, 384.

Also, Kuhns vs. The Westmoreland Bank, 2 Watts, 136.

Farmers Bank of Reading vs. Riah Gilson, 6 Barr, 51.

In the case of The West Branch Bank vs. Armstrong, 4 Wright, 278, the court held: That by the act of March 20, 1819, section 35, where bank stock is taken in execution and sold, the purchaser of the stock takes it subject to the lien of any debt due by the holder of the stock to the bank; and a subsequent sale of the stock for the debt creating such lien divests the title of the first purchaser. A judgment having been recovered against the drawer of a note an endorser thereon paid the judgment to the bank and took an assignment of it. This did not extinguish the lien of the bank on the stock which attached upon the protest of the note, and the endorser acquired the rights of the bank and became entitled to all its remedies.

The case of Railroad vs. Clark & Thaw, 5 Casey, 146, rules: Under the provisos to the 7th section of the general railroad act, no valid transfer of stock can be made by a person indebted

to the company without the consent of the board of directors, and then no such transfer of stock will discharge the owner of it from any liability theretofore incurred.

The liability to pay for the amount of stock subscribed is an indebtedness within the meaning of the act, although the installments have not been called in at the time of the transfer.

A transfer of stock so indebted without the action of the board of directors is a nullity, and such consent must be evidenced by a recorded resolution of the board, and cannot be proved by parol, unless the written minutes have been lost or destroyed.

In ordinary transactions between corporations and strangers, the authority of agents and the existence of contracts may be implied from circumstances, or where the assent of the board is required by by-law; but where the charter grants a power, the mode prescribed for its exercise must be strictly pursued.

This case is affirmed in Graff vs. Rail Road Company, 7 Casey, 489. And in Hays & Black vs. same, 2 Wright, 93.

The cashier of a bank is not, by reason of his official position, presumed to have the power to bind it as an accommodation endorser on his individual note; and the payee who fails to prove that the cashier, as such, had authority to make the endorsement, cannot recover against the bank. West St. Louis Savings Bank vs. Shawnee County Bank, 5 Otto, 557.

The officers of a corporation are the custodians of its books, and it is their duty to see that a transfer of shares of its capital stock is properly made, either by the owner himself or by a person having authority from him. Telegraph Company vs. Davenport, 7 Otto, 369.

In Bank of the United States vs. Dunn, 6 Peters, 51, this court said:

"On this ground alone the objection would be fatal; but the most decisive objection to the evidence is, that the agreement was not made with those persons who have power to bind the

bank in such cases. It is not the duty of the cashier and president to make such contracts; nor have they the power to bind the bank except in the discharge of their ordinary duties. All discounts are made under the authority of the directors, and it is for them to fix any conditions which may be proper in loaning money. If, therefore, the evidence were clear of all other legal objections, it could not have the effect to release the defendant from liability. The assurances relied on, if made, were not made by persons authorized to make them; nor would it be bound if the assurances had been made in so specific and direct a manner as to create a personal responsibility on the part of the cashier and president."

The same principle is involved in the Bank vs. Jones, 8 Peters, 12.

The findings of fact by the Circuit Court, as are contained in the opinion of the court, pp. 43, 44, marg. pp. 152, 153, 154, we submit are entitled to great weight in the consideration of this case, and if they are conclusive, then this is an end of the case of the appellant.

If the appellant has a full, complete and adequate remedy at law, jurisdiction in equity will not attach.

"A party entitled to a transfer of the stock of an incorporated company may maintain a special action on the case against those whose duty it is to permit a transfer to be made and who refuse permission."

Morgan vs. Bank of North America, 8 Sergeant & Rawle, 73.
Also, Presbyterian Church vs. Carlisle Bank, 5 Barr, 345.

The Pennsylvania cases cited in the first part of this brief are actions at law.

The bill of the plaintiff claims, among other things, damages for the refusal to make a transfer of the stock in controversy. If this claim can be sustained it covers their whole case, as the measure of damages would be the value of the stock at the time of the refusal on the part of the appellee to permit a transfer of it to be made.

"Suits in equity shall not be sustained in either of the courts of the United States when a plain, adequate and complete remedy may be had at law." Act of Congress, September 24, 1789. Revised Statutes, p. 137, section 723.

" When a party brings a bill in equity, complaining of an injury for which he has a plain, complete and adequate remedy at law, the bill must be dismissed."

Parker vs. Lake Company, 2 Black, 545.

Baker vs. Biddle, Baldwin, 394.

" The court has denied relief in cases in equity where the remedy at law has been plain, adequate and complete, though the question was not raised by the defendants in their pleadings nor suggested by the counsel in their arguments." Hipp vs. Babin, 19 Howard, 271, and cases therein cited.

We respectfully submit that upon a view of the whole case there is no error in the findings and decree of the Circuit Court, and that the appeal of The Cecil National Bank should be dismissed.

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